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Damages for Wrongful Rejection of Check.

Among the legal decisions published in this issue is one wherein a depositor sued his bank to recover damages because of the bank's wrongful refusal to pay his check for $13.65. At the time of the presentment of the check, the plaintiff had ample funds on deposit to pay it. Because of the fact that a deposit previously made by the plaintiff, had been erroneously credited to some other person, the bank was under the impression that the check was drawn against insufficient funds. The bank was guilty of no intentional wrong, but was merely the victim of a mistake of bookkeeping. Upon being advised of its mistake, the bank immediately notified the payee, caused the check to be sent back and paid it together with the costs of protest. The drawer of the check, feeling that he had been injured as a result of the bank's error, brought suit for damages in the sum of $1000. The case was tried before a jury and the jury, feeling that the plaintiff had been injured to the extent of $500, awarded him damages in that amount.

Upon appeal, the supreme court of Montana decided that while the plaintiff was entitled to recover damages, he was not entitled to quite as much as the jury had given him. The supreme court decided that $200 was sufficient to reimburse the plaintiff for the injury which he had sustained and cut the verdict down to that amount. "The plaintiffs were entitled" said the court, "to vindicate themselves from the possible imputation upon their solvency and good faith and to be reimbursed for the cost of their effort in that behalf, but no more; and for this the sum of $200 should suffice." The case is Crites v. Crites, which will be found on a subsequent page among the legal decisions.

When one person is injured through the wrongful or negligent act of another, the law permits the injured party to recover from the wrongdoer the damages which he has sustained as a result of the wrongful act. As a general rule, it is necessary for the party claiming damages to

prove that he has sustained damage and to introduce evidence as to the amount of such damage in order that he may be entitled to recover. In many jurisdictions, the injured party may recover damages without showing that actual damage was sustained, where it appears that the injury was maliciously done.

These are the general rules with respect to the recovery of damages. They do not, it seems, apply to certain cases involving the payment of bank checks. The cases in mind are those wherein a bank, in the mistaken belief that a check is drawn against insufficient funds, refuses to pay the check. In such a case, the refusal of the bank to pay the check is made in entire good faith. The bank acts without any malice whatever and in the honest belief that the drawer has not on deposit a sufficient amount to pay the check in question. Nevertheless, in cases of this kind the drawer of the check is, as a general rule, allowed to recover damages from the bank upon showing that his check was rejected and that he had on deposit to his credit sufficient funds to pay it. Mistakes of this kind may occur because the bank has neglected to credit a deposit made by the drawer of the check or because it has credited it to some other person by mistake, or because of some other error in the keeping of its accounts. But whatever may the cause of the mistake, the bank must pay to the drawer the amount of damages decided upon by the jury, even though the drawer does not show that he has actually sustained any damage through the bank's mistake. In some jurisdictions, recovery of damages without proof that injury has been sustained in cases of this character is limited to instances in which the drawer of the check is a merchant or trader. In other jurisdictions, this rule is apparently given general application.

The grounds upon which such damages are allowed, vary in different jurisdictions. In some, it is said that the business of the community would be at the mercy of the banks if they could, at their pleasure, refuse to honor a depositor's checks and then claim that such action was a mere breach of an ordinary contract, for which only nominal damages could be recovered, unless special damages were proved. In others it is said that the right of the drawer of a wrongfully rejected check to recover more than nominal damages stands upon the ground that the rejection of the check imputes insolvency, dishonesty or bad faith to the drawer and has the effect of slandering him in his business.

This rule of damages is decidedly unfair to banks. If an individual or business institution other than a bank unintentionally injures some other person, it is liable to him for the amount of damages which the injured party sustains. But the injured party does not make out a case, or show himself entitled to damages, until he has produced evidence establishing the fact that he has actually suffered a loss. The negligent party is liable only for the amount as will be a fair and just compensation for the injuries sustained. The banks, however, are held to a stricter rule. The law in effect tells the banks that they must not make

mistakes. At least, it says that if, through a mistake, they reject a check which ought to have been paid, their liability will not be measured by the rules applicable to men in other lines of business. Attempts have been made to overcome this extraordinary rule of liability, which is applicable to banks, by the enactment of appropriate statutes, the only method by which it can be overcome. But so far as we have been informed, not much progress has been made. The rule is one to which bankers should direct their attention through their associations.

Carelessness with Reference to Signed Blank Checks.

There is a recent decision by the Kansas City Court of Appeals which would make excellent reading for all bank depositors. A knowledge of the meaning of this decision would not only help the depositors, but would indirectly benefit the banks, for it might persuade the depositors to exercise a little greater care in guarding signed blank checks than they usually do. The case referred to is S. S. Allen Grocery Co. v. Bank of Buchanan County, which is to be found among the legal decisions published in this issue.

The grocery company was one of the valued depositors of the defendant bank. The trouble started when the president of the company found it necessary to absent himself from the city and left behind him a check book containing a number of signed blank checks in the custody of the manager. The manager had authority to fill out the checks and use them in carrying on the business until the president's return.

The next development in the plot comes with the entrance of one Rose, a traveling salesman, into the story. Rose had transacted business with the company and it seems reasonably certain that, while in the office, he discovered the presence of the book containing the blank checks and also obtained the knowledge that it was the manager's habit to leave the check book upon his desk, even at times when he left the office. At any rate, Rose visited the office during the noon hour and inquired for the manager. Upon being informed that the manager was out for lunch, he requested the privilege of writing some letters. Permission was accorded him and he seated himself at the manager's desk. While apparently engaged in writing his letters, he surreptitiously abstracted a sheet containing three signed blanks from the book.

He filled out one of them for $395.60 which was paid by the teller of the defendant bank, to whom he presented it and to whom he was known. He grew more ambitious with the second check and wrote in the sum of $2,700.95. This he presented at a trust company and received a cashier's check which he subsequently collected. The third check he filled in for $195.15 and delivered it to a jeweler in payment for a ring. As a result of Rose's transactions, the plaintiff's account was

overdrawn by more than $600. The grocery company's credit in the bank was perfectly good and the latter paid the checks as they came in without hesitancy.

When the frauds were discovered, the grocery company commenced action against the bank to recover the amount of its deposit at the time when Rose started out on his career of forgery. The plaintiff company based its right to recover on the theory that the checks were incomplete instruments, which had never been delivered and which were completed and negotiated without authority. The Negotiable Instruments Law provides that instruments of this kind are not valid contracts in the hands of any holder. In the ordinary case, where a signed check, not completely filled out, is stolen and negotiated, the person who receives it, even though he be a holder in due course, cannot enforce it. The express provision of the section of the statute just referred to prevents the holder from recovery on a check in such a case.

The defendant, however, contended that the case presented here is extraordinary by reason of the extreme negligence of the grocery company and that the provision of the statute did not apply. The position of the defendant was that the relation between the parties, being that of banker and depositor, involved reciprocal duties peculiar to such relationship, which lie outside the scope of rules pertaining to holders for value of negotiable instruments, and that one of the duties of plaintiff towards defendant forbade the latter from signing blank checks except for the sole purpose of directing defendant to pay them and that in signing such blanks, and then negligently exposing them to theft, plaintiff was guilty of such a breach of duty as to estop it from claiming the checks were not delivered, or were not binding contractual orders to pay money which defendant, as banker and debtor, was bound to honor on presentation.

The court decided that the equities were entirely with the bank and declined to permit the plaintiff to recover.

Without going into the theory which the court advanced in support of this decision, it is sufficient to say that the decision rests principally on the ground that the grocery company did not exercise proper care in the custody of the signed checks and that the loss was due entirely to its negligence in that regard.

Bank depositors are notoriously careless with checks which they sign in blank. They leave them around where they can get into the hands of persons for whom they were never intended. The average bank depositor is imbued with the idea that the bank must stand responsible for any unauthorized payment, whether it be a check bearing a forged signature or indorsement, or stolen or raised check, or a check in some other manner irregular. And in the main, the depositor is quite correct. He looks upon his bank as a combination of banking house and insurance company and it must be said the law largely upholds him in this view. This feeling of security on the part of the depositor is not calculated to cause

him to exercise care in the issuance of checks signed in his name. The decision above referred to, however, points out there is a limit to the bank's responsibility in cases of this kind. It is to be hoped that it will come to the attention of at least a few of those, who indulge in the inconsiderate practice of signing blank checks, without taking the proper precaution to see that they are delivered only to persons honestly entitled to them.

Negotiability of Note Providing for Discount.

It has long been established in the law that certainty in amount is one of the elements of negotiability and that an instrument, which is not certain in amount, is not negotiable. The reason for this rule is that negotiable paper is issued as a substitute for money and, therefore, must indicate precisely how much money it represents.

The difficulty with the rule lies in determining just when an instrument calls for the payment of an amount certain. There are many provisions, customarily incorporated into promissory notes and other forms of negotiable paper, which tend to render them uncertain as to amount. And it is not always an easy matter to determine whether a particular instrument is sufficiently certain in amount to meet the requirements of negotiability.

It is quite clear that an instrument payable with interest is negotiable for it is a simple matter of computation to find out just what amount will be due when the instrument matures. It is also held that a note is negotiable, though payable in installments and even though it provides that the entire amount shall become due on default of the payment of any installment. Instruments payable with exchange are deemed certain in amount and, therefore, negotiable and so also are instruments which provide for cost of collection, or an attorney's fee, in the event of nonpayment at maturity. Instruments containing provisions such as those just referred to are all covered by the provisions of the Negotiable Instruments Law, which declare that all such instruments call for the payment of a sum certain within the meaning of the statute.

In the case of the First National Bank v. Watson, recently decided by the Supreme Court of Oklahoma and published among the legal decisions in this issue, we have an instance of a note containing a provision rendering it nonnegotiable for uncertainty in the amount payable. The provision which caused the note to be declared nonnegotiable reads: "A discount of 6 % will be allowed if paid in full within 15 days from date." With this provision included, it could not be determined at the time of the issue of the note just how much money would be required for its discharge.

The court expressed itself upon the effect of the provision for the dis-

count in the following language: "The sum payable—that is, the amount for which, by the terms of the instrument, the maker became liable, and which he might tender and pay in full satisfaction of his obligation —was, at the date thereof, to a certain extent, dependent upon his will; he had the right to pay a greater or less sum than the principal; he could if he saw fit, within the prescribed period, discharge his debt at 94 per cent, or thereafter pay 100 per cent on the dollar. Under such condition, the sum payable was, at the time of the execution of the instrument, clearly indefinite and uncertain."

Receiving Deposits from Executors and Administrators.

An extremely unsafe banking practice, which has often been referred to in these pages, is that of permitting an executor or administrator to deposit in his individual account funds held by him in his official capacity. In this issue among the legal decisions is published the case of Miami County Bank v. Peru Trust Co., recently decided by the Appellate Court of Indiana, in which it appeared that the defendant bank permitted an administrator to deposit estate funds in his personal account. The administrator subsequently withdrew and misappropriated a considerable amount of the money belonging to the estate. The plaintiff trust company was appointed administrator in place of the defaulting administrator and brought suit for the amount of his defalcations against the defendant bank.

In this case it was held that the bank was not liable for the amount which the administrator withdrew and appropriated to his own use. This decision, however, does not express the universal rule. In the February issue, we published a New York decision, in which the contrary conclusion was reached by the court and the bank was held liable. While banks may be protected in some jurisdictions in permitting executors or administrators or other persons acting in the fiduciary capacity to deposit trust funds in their individual accounts, the practice is one to be avoided. Even when the bank is absolved from liability in such a case, it often establishes its freedom from legal responsibility only after long and costly litigation. Every bank should make it a rule to require persons presenting for deposit funds which they hold in a trust capacity to open an account indicating the official title of the depositor, such as "John Doe, administrator of the estate of Richard Roe, deceased." As we have pointed out in previous issues, this is no protection whatever to the estate, in the event that the administrator decides to abuse his trust. It is, however, a method of keeping the bank out of litigation.

LIABILITY OF NATIONAL BANK DIRECTORS,

WHO ATTEST FALSE REPORTS AS TO BANK'S CONDITION, TO PERSONS WHO SUSTAIN LOSS IN RELIANCE ON SUCH REPORTS.

In the case of Jones National Bank v. Yates, 36 Supreme Court Rep., 429, decided on April 3rd, 1916, the Supreme Court of the United States hands down a decision which must command the attention of all bank directors, especially directors of national banks.

Briefly the case against the defendants was this: The defendants were directors of a national bank and as such directors, in answer to the call of the Comptroller of the Currency, made statements purporting to show the financial condition of the bank and caused them to be published in the local newspapers; the plaintiff, in reliance on the information contained in these reports, deposited a large sum of money in the bank and permitted it to remain there; the statements of the bank's condition were false and untrue to the knowledge of the directors and the bank was actually insolvent at the time the statements were made; subsequently the bank failed and passed into the hands of a receiver and the plaintiff brought suit against the directors, charging them with personal liability for the amount of his loss.

The litigation, out of which the decision arose, has been in the courts since sometime prior to 1905 and has a long and involved history. This action was started, in the district court of Nebraska, wherein the defendant directors were held liable. Upon appeal to the Supreme Court of Nebraska, the judgment of the lower court was reversed. But the United States Supreme Court now reverses the Nebraska Supreme Court and reinstates the judgment obtained in the trial court.

The effect of this decision is that the directors were personally responsible under section 5239 of the United States revised statutes as follows: "If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, * * * every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation."

The following excerpts are taken from the opinion in this case, written by Mr. Justice Hughes and they fully disclose the contentions urged in behalf of the plaintiff and the grounds on which the court's conclusions as to the defendants' liability are based:

"As to the financial condition of the bank, there is no room for controversy. It would be difficult to conceive of a case of more scandalous maladministration than that which the testimony portrays. There was evidence of manipulation of accounts, of fictitious and falsified entries, of fraudulent concealments. It cannot be said that there was serious effort to meet this evidence. There was no attempt to palliate the offenses which it appeared had been committed by the executive officers in the conduct of the bank's affairs. But these directors were not accountants; presumably they relied upon the books as containing accurate items, and there is no basis for the conclusion that they had knowledge of fictitious or falsified entries in the books, or of the fraudulent transactions which such entries were intended to conceal, and which were revealed after the bank failed. With respect to such concealed transactions, we find nothing to show that the directors knowingly participated in, or assented to a violation of the statute.

We pass, therefore, to matters of a different sort which lay easily within the ken of the directors. The bank had been incorporated as the Marsh National Bank, in the year 1883, with a capital stock of $100,000. The assets and liabilities of a preceding concern, Marsh Brothers, Mosher, & Company, were transferred to the bank and became its assets and liabilities. In 1884, the name was changed to the Capital National Bank of Lincoln; the capital stock was then increased to $200,000, and in 1886 there was a further increase, making the total capital stock $300,000. Yates, Hamer and Thompson became directors in 1884, and continued as such until the failure of the bank in January, 1893. There were seven directors in all, including C. W. Mosher, the president. It appears that, at the time of the failure, the bank's assets at their face value, as shown by the books, were about $1,031,000. The liabilities, as shown by the books, including capital stock, amounted to about $1,017,000; these seem to have been in fact (including liabilities on rediscounts) about $1,760,000. Included in the assets above stated, the amount of $850,959.86 (in face value) was in bills receivable of which $155,560.84 were classed by the receiver as doubtful and $397,073.63 as worthless. The actual showing on liquidation appears to have been even worse; the total amount realized from the bills receivable (aggregating $850,959.86) was $229,520.82, and the total amount realized from all the assets of the bank (including rediscounted items placed in the hands of the receiver for collection, and excluding stock assessments) seems to have been less than $400,000.

"The evidence was that at the time of the failure there were on hand worthless notes of C. W. Mosher, the president, amounting to $85,281.67; of the cashier, R. C. Outcalt, $54,166.96 (less an offset of $570.99); and of the Western Manufacturing Company (signed by E. Hurlburt, Jr., manager), $235,000. This concern was apparently but another name for C. W. Mosher; the testimony is that it had no assets and ceased to do an active business in 1889. There were also notes in the name of

E. W. Mosher aggregating $107,085.45, which it was testified were worthless, save for a collection on collateral of less than $10,000. According to the schedules in evidence these worthless notes had been taken since June 1, 1892, that is, within a period of seven months before the failure. And while the totals of these accounts, respectively, were much larger than they had been formerly, the same accounts embracing loans to a considerable amount had long been carried and were included in the published reports. There was evidence that there had been about $200,000 of worthless notes in these accounts in January, 1892. While it is not necessary for the present purpose to go further back, the testimony supports the finding of the trial court that the bank in fact not only had no surplus or undivided profits, but that its actual condition was one of insolvency.

"In the fourteen months before the failure the evidence shows three of the official reports made to the comptroller of the Currency and published in the newspapers in Lincoln; those of December 2, 1891, September 30, 1892, and December 9, 1892. The total resources in these reports are stated, respectively, as $1,143,946.88, $1,033,561.11, and $1,074,867.37. Each of these reports shows the capital stock unimpaired. As of December 2, 1891, the surplus is stated to be $32,000, and the undivided profits, $23,276.89; as of September 30, 1892, these items are $6,000 and $11,978, respectively; and as of December 9, 1892, $6,000 and $21,180.75. In January, 1892, the directors declared a dividend of 5 per cent, and in July, 1892, a further dividend of 4 per cent. There was evidence of serious dicrepancies between the items in the published official reports and corresponding items as shown by the books. Without attempting to state the details disclosed by the voluminous record, it is sufficient to say that it was clearly shown by evidence substantially undisputed that these reports constituted grossly false representations of the bank's financial condition upon which the plaintiffs were invited to rely and did rely.

"There was also substantial basis for the finding that the directors assented to the making and publication of these reports; for, as we have said, whether this or that director attested a particular report is not controlling upon the question of assent. The official reports required by law are the reports of the bank, and not simply of those signing and attesting. As the reports of the bank, they are made under its authority and presumably with the assent of the board of directors. Taking the proved circumstances into consideration, and particularly in the light of the activity of these directors, to which we shall presently refer, it is hardly conceivable that they did not know of the last-mentioned official reports which were made on behalf of the bank and published in Lincoln. Certainly, the fact of such knowledge on the part of each of them could properly be found. There is no suggestion that they made the slightest objection to the making or publication of these reports, and the evidence was unquestionably sufficient to show their assent to this action on behalf the bank.

"The remaining question is with respect to the evidence of the knowledge of these directors of the falsity of these official reports, or of such reckless disregard of the truth or falsity of their contents as would show that the participation in, or assent to, the violation of the statute, was 'in effect intentional.' Under date of September 8, 1891, the Comptroller of the Currency addressed a letter to President Mosher, referring to a report of an examination of the bank, and criticizing various matters. It was evidently in view of this communication that the trial court took September, 1891, as the time after which the directors had knowledge of facts showing the falsity of the reports. Without reciting the letter in full, it is sufficient to note that the Comptroller called attention to two loans (one being that of E. W. Mosher) exceeding the statutory limit; to the fact that at the time of the last report of the bank the overdrafts shown by the books largely exceeded those stated in the report; to overdue paper, with the statement that such of it as was good should be collected or made active by renewal with satisfactory security; to the excess of current expenses over undivided profits; and to the fact that the bank had a large liability on account of rediscounting paper said to be caused by the falling off in deposits. It was suggested that some of the loans should be called in as soon as practicable, and the letter closed with the statement that, according to the examiner's report the board of directors had held only two meetings during the past year, and that there was 'no record of their having examined or approved of the loans and discounts.' It was pointed out 'that the conduct of affairs of a national bank is by law devolved upon the board of directors, and that regular and frequent meetings are therefore very desirable.' The defendants insist that they were not apprised of this letter until after the failure. There was evidence tending to show that it was considered at a meeting of the board in September, 1891, but, in addition to explicit denials, there was testimony to impeach the credit of the witness so testifying. There was, however, another letter from the Comptroller of the Currency under date of February 16, 1892, which admittedly was brought to the attention of the directors. This letter, in substance, repeated several of the criticisms which had been made in the earlier letter; it referred to the desirability of collecting as soon as practicable loans that had been carried for a number of years, and to the agreement of Mosher and Outcalt to reduce their liabilities and to close ' the bulk of their outside interests,' owing to which the business of the bank had suffered; it again emphasized the duty of the directors with respect to the conduct of the bank's affairs; and it concluded with a request for a reply over the director's 'individual signatures.' The directors, including those whose liability is now in question, accordingly signed a reply, under date of February 19, 1892, which purported to furnish explanations and promised improvement. It was stated that the bank had always had a discount committee, and that a vacancy caused by the death of a former member had been filled by the appointment of E. P. Hamer.

The last-mentioned director also wrote to the Comptroller on February 23, 1892, to the effect that the manner of conducting the bank had not been satisfactory to him, and, promising better management, he added: "Your letter is a move in the right direction, it indicates that we the directors should take a more positive position in the management which I for one shall do."

"Apparently the Comptroller of the Currency was not satisfied. For it appears that he wrote another letter under date of August 31, 1892, which, having been lost, was not introduced in evidence. But the letter in reply, which the directors, including Yates, Hamer, and Thompson signed individually (under date of September 19, 1892, as stated by defendants' counsel), is in evidence and its significance cannot be overlooked. Among other things, it stated:

"'The dividend of July 1st was all right; the expenses since then have exceeded income by reason of having paid taxes & interest on certificates of deposits to an unexpected amount during July. The item of $8,000 losses referred to was an estimate of contingent losses & not any particular loss already incurred, but referred to some matters or process of liquidation, all items mentioned by you shall receive prompt attention.'

"There was thus sufficient evidence from these directors themselves that they were scrutinizing the affairs of the bank; that prior to the published official report of September 30, 1892, which was followed by the published official report of December 9, 1892, these directors were examining the condition of the bank, that they were considering the losses sustained, the expenses incurred, and the basis of the dividend declared in July. These were not casual statements, but deliberate assertions of activity of supervision in response to official complaint. It was plainly permissible, despite their disclaimers and denials, to attribute to these directors the knowledge which men of ordinary intelligence would readily have obtained with respect to the financial condition of the bank in the course of the supervision which they professed to be actively exercising. Assuming that they were ignorant of the frauds that had been committed and concealed by falsified entries, there was warrant for the conclusion that they could not have failed to acquire sufficient information to be aware that the representations in the official reports of the latter part of the year 1892 were materially false and calculated to deceive. The questions of fact, so far as they arose upon a substantial conflict in evidence, were for the trial court. Citizens Ins. Co. v. Herpolsheimer, 77 Neb. 232, 109 N. W. 160; Madison Nat. Bank v. Gross, 98 Neb. 684, 154 N. W. 207. It is not necessary for us to review the evidence in detail. It is sufficient to say that our examination of it has convinced us that the findings of the trial court, at least with respect to the last-mentioned reports, had substantial support; and, in this view, we must conclude that the reversal of the judgments, as

entered in the trial court, upon the ground of the legal insufficiency of the plaintiffs' case when tested by the Federal statute, was error.

"The judgments of the Supreme Court of the State are reversed and the cases are remanded with instructions to reinstate the judgments entered in the District Court, which are affirmed. Stanley v. Schwalby, 162, U. S. 255, 279-283, 40 L. ed. 960, 968-970, 16 Sup. Ct. Rep. 754.

"It is so ordered."

This decision should certainly impress all national bank directors, and directors of other banks as well, with the importance of understanding the law which controls their personal liability to stockholders, depositors and third persons dealing with their bank. A concise statement of the law is found in the recently published encyclopaedia of law, Ruling Case Law, volume 3, page 471 and we quote it for the benefit of bank directors who are interested in performing the duties of their office as the law decrees such duties should be performed and who are further interested in protecting themselves from legal liability.

"Misrepresentation of Financial Condition of Bank in General.—It is now settled that the directors of a bank are personally liable, at the suit of a depositor, for damages sustained by reason of the insolvency of the corporation, when the depositor is induced to place money in the bank solely by false representations of solvency made to the general public by the directors, who ought to have known, and by the use of ordinary care, such as it was their duty to have exercised, might have known, that such representations were false. And it would seem that liability for deceit may be incurred by directors in making a false report as to the condition of the bank to the federal or state officers, in compliance with a statutory requirement, though this has been denied. The liability of the directors has been held to extend not only to the depositors but also to persons who purchase stock in the bank on account of the false representation or report. Directors have also been held liable to a person who loaned money on the bank stock in reliance upon a false statement. And if the directors of an insolvent bank make false and fraudulent statements as to its condition, in order to conceal its insolvency, and thereby induce a depositor not only to make new deposits, but also to permit a part of the funds already deposited to remain, they are liable in case of loss for all of the deposits, both new and old. But where a depositor brings an action of deceit, and it appears that he was a depositor at the time of the publication of the statement complained of, he must allege not only that he was induced by such statement to remain a depositor, but also that but for the statement he could have withdrawn his deposit before the failure of the bank. Only those directors who knew of, or assented to, or joined or co-operated in the making of the false report can be held liable. A published report of the financial condition of a bank, in which the resources and liabilities are equally inflated, is not such a material misrepresentation as will

support an action for deceit, unless by such report the condition of the bank is made to appear to be better than it actually is. A statement in which overdrafts are described as 'loans and discounts' is materially false. But a statement is not rendered materially false by the fact that the item of 'interest on rediscounts' is deducted from 'undivided profits,' instead of being set out as a specific item."

At page 472 of the same volume, with respect to the knowledge and intent of directors, who attest untrue statements as to the bank's condition, it is said:

"For the purpose of fixing liability on directors for false representation it has been considered immaterial whether the false representation or report was made with the intent to defraud, or whether they had knowledge of its falsity, if they should, in the performance of their duties, have had such knowledge. On the other hand, since the liability of directors for making a false report is based on fraud and deceit it has been held that they are not liable if the representation, though false, was made in good faith and in the honest belief of its truth; and that they cannot be held liable where they honestly believed that the statement was true, and it was in good faith based upon details furnished to them by the cashier whose reputation was good, or where by the exercise of ordinary care and prudence they would have discovered the falsity of the report. Under the national banking act the directors of a national bank can be held civilly liable only where they made the false report to the comptroller of the currency with knowledge of its falsity. The civil liability of national bank directors in respect to the making and publishing of the official reports of the condition of the bank, a duty solely enjoined by the statute, being governed by the national banking act, it is self-evident that the rule expressed by the statute is exclusive, because of the elementary principle that where a statute creates a duty and prescribes a penalty for nonperformance the rule prescribed in the statute is the exclusive test of liability. But the act of directors of a national bank in including as a part of the resources in a report of the condition of the bank, pursuant to a call of the comptroller of the currency, assets which had previously been called to their attention by the comptroller as doubtful, with directions for their immediate collection or removal from the bank, is in effect an intentional violation of the national banking act, knowingly committed, so as to render them liable for a loss resulting to one purchasing in reliance on such report, stock of the bank on which an assessment is soon after made on announcement by the comptroller that its capital stock has become totally impaired."

MUNICIPAL BONDS.

BY H. C. SYLVESTER, JR. OF N. W. HALSEY & CO.

There are several tendencies in the financial situation which are being observed frequently by those best informed, and which affect municipal bond values just as they affect all values which may be quoted or expressed. First of these is the increasing gold supply. As long as gold continues to flow into this country, municipal bonds will sell at higher prices. An increased gold supply means increased buying power. The more money the country has the more it will pay for municipal bonds.

Why municipal bonds? The explanation lies in a second aspect of the situation, an aspect which arises out of the very source of our gold supply, viz, the country's foreign trade. With exports so largely in excess of imports and with our present reduced tariffs, the Treasury Department reports a deficit in respect to its receipts and disbursements. While this situation is showing some improvement the Federal Income Tax is admittedly not adequate to put the Govermnent on a pay as you go basis, and it is by no means certain that we may dismiss from consideration the possibility of an extension of the Federal Income Tax measure. The law certainly remains an important factor in the municipal market and will continue to be until tariffs on imports are resumed.

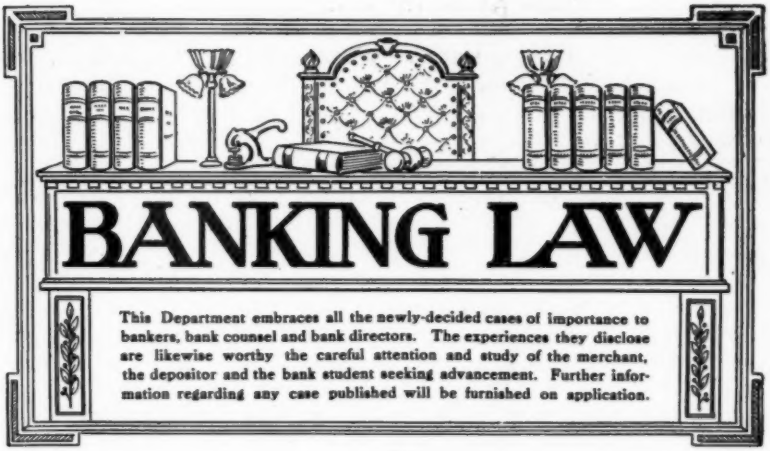
Briefly, the demand for municipal bonds will improve with the continuance of the war, and this demand will be stimulated by the imposition of increased taxes, both Federal and State, on securities other than municipal obligations.

There are two contingencies which might adversely affect municipal bonds. The first is the entrance of the United States into war. Any prediction as to what would happen would be guess work; but one thing is certain. The Government would bring out an issue of bonds. Such an issue might amount to $500,000,000, and the chances are it would overshadow the market in state and city obligations.

The second contingency is the possibility of the repeal of the Federal Income Tax Law. This would, to some extent, diminish or retard the demand for municipal bonds.

In 1901 it was thought by some that the United States was permanently on a 3 per cent interest basis. At least it was so asserted. Any such assertion would be just as fallacious today as it was then, but the point to remember is that when these theories were set forth they were based on the fact that New York City had sold 3 per cent bonds at a premium and other cities sold bonds on a 3 per cent basis. Buffalo bonds, for instance, have sold in years past on a 3 per cent basis, as compared with a 3.90 per cent basis, the current quotation. The prosperity which we enjoy now is far more substantial and based on larger operations. If the plans of bankers and manufacturers materialize in foreign trade, we should enjoy a continuance of business, an additional influx of gold. Rather than take the gold we should prefer further extensions of credit to foreign nations. Loans of this description fortify our international relations and they are much better for the country as a whole than gold in our banks. If investors will continue to perceive their true merit, the supply of such bonds will keep down the demand for our own issues.

To say that the high grade issues are permanently on a 4 per cent basis, or to say that they will command their present prices for years to come would be as fallacious as to predict that the money rate will not fluctuate. But the possibility of a decline in the municipal market during the present year is really remote, in fact those who persist in waiting will find that the available offerings have been withdrawn or closed out.


BANKING LAW
This Department embraces all the newly-decided cases of importance to bankers, bank counsel and bank directors. The experiences they disclose are likewise worthy the careful attention and study of the merchant, the depositor and the bank student seeking advancement. Further information regarding any case published will be furnished on application.

LIABILITY OF BANK DISHONORING CHECK THROUGH MISTAKE.

Crites & Crites v. Security State Bank of Havre, Supreme Court of Montana, March 3, 1916. 155 Pac. Rep. 970.

The defendant bank, in which the plaintiffs kept their account, rejected one of plaintiffs' checks in the mistaken belief that it was drawn against insufficient funds. The mistake was due to the bank's error in crediting to some other person a deposit previously made by the plaintiffs. The plaintiffs were engaged in the retail meat business and the check in question was issued in the course of trade. It was held that a verdict of $500 in favor of the plaintiffs was excessive, but that the plaintiffs were entitled to $200 damages.

Appeal from District Court, Hill County; John A. Matthews, Presiding Judge.

Action by W. D. Crites and J. R. Crites, copartners doing business as Crites & Crites against the Security State Bank of Havre. From a judgment for plaintiffs, and an order denying new trial, defendant appeals. Modified and affirmed.

Cooper & Stephenson, of Great Falls, and Charles A. Rose, of Havre, for appellant. Victor R. Griggs, of Havre, for respondents.

SANNER, J. The plaintiffs, trading copartners engaged in the retail meat business at Gildford, this state, drew a check upon the defendant bank for $13.65 payable to the order of the Booth Fisheries Company of St. Paul. The payee, in due course of business, caused the check to be presented to the defendant bank for payment. The bank refused payment for that it did not have sufficient funds belonging to the plaintiffs to pay the check and caused the check to be protested and returned.

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, § 179.

The plaintiffs had ample funds with the bank to meet the check, and the dishonor and protest were due to a mistake of the bank in crediting a previous deposit by the plaintiffs to the wrong person. Being advised of its mistake, the bank notified the payee, caused the check to be sent back, and paid it with the costs of protest. Upon these facts, the plaintiffs claiming damages in the sum of $1,000, the cause was presented to a jury, who awarded the plaintiffs $500. The sufficiency of the evidence to justify this verdict, and some procedural rulings, are presented for review.

The cause of action accrued in March, 1913, and at that time the liability of a bank for the wrongful dishonor of a customer's check was not limited, as it is now, to the damages actually proved; but, in the case of a trading customer, substantial damages, temperately measured, were to be presumed (5 R. C. L. 548 et seq., and cases cited). The respondent stood upon this presumption, showing no malice and presenting no evidence of tangible loss. In these circumstances it cannot be said that the jurors did not exercise their best judgment in fixing the award, bereft, as they were, of the ordinary measures of evaluation; and if their best judgment was exercised, then their verdict was not the result of passion and prejudice so as to warrant a new trial.

But while this is so, we think the verdict is excessive, measured by any applicable standards which may be suggested in matters of this kind. The plaintiffs were entitled to vindicate themselves from the possible imputation upon their solvency and good faith, and to be reimbursed for the cost of their effort in that behalf, but no more; and for this the sum of $200 should suffice.

The procedural rulings assigned present no ground for reversal.

The order denying a new trial is affirmed, but the cause in remanded to the district court, with directions to modify the judgment so as to award plaintiffs the sum of $200 as damages, with their costs, and as so modified to stand affirmed. Each party will pay his own costs upon these appeals.

Modified and affirmed.

BRANTLY, C. J., and HOLLOWAY, J., concur.

PAYMENT OF FORGED CHECK.

Bergstrom v. Ritz-Carlton Restaurant and Hotel Co., New York Supreme Court, Appellate Division, March 10, 1916. 167 New York Supp. 959.

A drawee bank cannot recover the money which it pays on a check bearing a forgery of the drawer's signature, where the party receiving payment was a holder in due course. In this connection the payee of a check may be a holder in due course.

Action by Charles R. Bergstrom against the Ritz-Carlton Restaurant

NOTE.—For other similar decisions see, Banking Law Journal Digest and Supplement § 191.

& Hotel Company. On submission of controversy. Judgment directed for defendant.

Oscar B. Bergstrom, of New York City, for Plaintiff.

Hugh M. Hewson, of New York City, for defendant.

DOWLING, J. Plaintiff sues as assignee of Eleanor Bergstrom and of Bergstrom & Co., a firm composed of Oscar B. Bergstrom and Harry Taylor, private bankers. Eleanor Bergstrom is the wife of Oscar B. Berstrom, and on November 1, 1912, they were residing in apartments in Carlton House, an apartment hotel at Forty-Seventh street and Madison avenue, New York City. Defendant operates the Ritz-Carlton Hotel, at Forty-Sixth street and Madison avenue, adjoining Carlton House, and occupants of the latter may order meals from the former. Eleanor Bergstrom was known to defendant, and her husband had an account with it. On the evening of the 1st day of November, 1912, a check in the sum of $300 on a printed form of check of said Bergstrom & Co., indorsed by one G. W. Freund, then an employe of the Carlton House Company, bearing the name of Eleanor Bergstrom as drawer, and payable to the order of the Ritz-Carlton Restaurant & Hotel Company was presented to the cashier of the Ritz-Carlton Hotel by an employe of the Carlton House, with the statement that Mrs. Bergstrom wished the cash on the check and that she was waiting for it in the Carlton House. The defendant's cashier then cashed the check and paid the sum of $300 to the party presenting it. Defendant deposited the check in its bank, and on the 6th day of November, 1912, it was presented to Bergstrom & Co. for payment and was paid. On presentation of said check the attention of Oscar B. Bergstrom was called privately by his cashier to the fact that the signature of the drawer did not appear to be authentic; but he, after examining the check, ordered it paid, saying:

"It is payable to the Ritz-Carlton, and no doubt is given for the November rent of our apartment."

Bergstrom's lease was with the Carlton House Company, and the monthly rental of their apartment was $300. The $300 paid by Bergstrom & Co. on presentation of the check in due course was placed to the bank credit of defendant. In fact, the signature of Mrs. Bergstrom to the check and her indorsement thereon were forgeries, and it was drawn without her knowledge or consent. She received no part of the money paid thereon, nor did any one on her account, and she had no knowledge of any of the circumstances attending the drawing, presentation, or cashing of the check. On December 10, 1912, her bank book with Bergstrom & Co. was balanced and her vouchers returned, including the paid check in question, when she discovered the forgery and thereupon notified her bankers thereof. Freund, whose name appears on the back of the check drew his pay and left the employ of the Carlton House Company before defendant was notified of the forgery, and he has not since been found, despite diligent search. De-

mand has been made on defendant for the return of the $300, which has been refused.

Defendant relies upon the principle enunciated in Price v. Neal, 3 Burrows, 1354, and reiterated in National Park Bank v. Fourth National Bank, 46 N. Y. 77, 7 Am. Rep. 310, where it was stated as follows:

"For more than a century it has been held and decided without question that it is incumbent upon the drawee of a bill to be satisfied that the signature of the drawer is genuine; that he is presumed to know the handwriting of his correspondent, and, if he accepts or pays a bill to which the drawer's name has been forged, he is bound by the act, and can neither repudiate the acceptance nor recover the money paid. The doctrine was broached by Lord Raymond in Jenys v. Fawler, 2 Strange, 946, the Chief Justice strongly inclining to the opinion that even actual proof of forgery of the name of the drawer would not excuse the defendants against their acceptance. In 1762 the principle was flatly and distinctly decided by the Court of King's Bench in the leading case of Price v. Neal, 3 Burrows, 1354, which was an action to recover money paid by the drawee to the holder of a forged bill. Lord Mansfield stopped the counsel for the defendant, saying that it was one of those cases that never could be made plainer by argument; that it was incumbent on the plaintiff to be satisfied that the bill drawn upon him was the drawer's hand before he accepted and paid it, but was not incumbent for the defendant to inquire into it. This case has been followed, and the doctrine applied, almost without question or criticism, in an unbroken series of cases from that time to this, and it has been distinctly approved in very many cases which have not been within the precise range of a principle decided. See Archer v. Bank of England, 2 Doug. 639; Smith v. Mercer, 6 Taunt. 76; Wilkinson v. Johnson, 3 B. & C. 428; Cook v. Masterman, 7 B & C. 902; Cooper v. Meyer, 10 B. & C. 468; Saundersan v. Coleman, 4 M. & G. 209; Smith v. Chester, 1 D. & E. R. 655; Bass. v. Clive, 4 M. & S. 15; Bank of Commerce v. Union Bank, 3 Comstock (3 N. Y.) 230; Goddard v. Merchant's Bank, 4 Comstock (4 N. Y.) 149; Canal Bank v. Bank of Albany, 1 Hill, 287. Cases have been distinguished from Price v. Neal, and its applicability to a transfer of a forged instrument, between persons not parties to it, has not been extended to forgeries of indorsements or handwriting of parties to negotiable instruments, other then the drawer. But, as applied to the case of a bill to which the signature of the drawer is forged, accepted or paid by the drawee, its authority has been uniformly and fully sustained, and the rule extends as well to the case of a bill paid upon presentment as to one accepted and afterwards paid. Bank of St. Albans v. Farmers' & Mechanics' Bank, 10 Vt. 141, 33 Am. Dec. 188; Levey v. Bank of the U. S., 4 Dall. 234, 1 L. Ed. 814; Bank of U. S. v. Bank of Georgia, 10 Wheat, 333. 6 L. Ed. 334; Young v. Adams, 6 Mass. 182; Gloucester Bank v. Bank of Salem, 17 Mass. 41. A rule so well established and so firmly rooted and grounded in the jurisprudence of the country ought not to be overruled or disregarded."

See Daniel on Negotiable Instruments (6th Ed.) §§1359, 1360.

Plaintiff admits that this rule of law applies to the case of a holder in due course and for value, but claims that, defendant being a party to the check itself, and it becoming commercial paper only after defendant had indorsed it and put it in circulation, defendant cannot stand in the position of a purchaser of commercial paper in due course. To

support this contention plaintiff relies on National Bank v. Bangs, 106 Mass. 441, 8 Am Rep. 349, which held that the responsibility of the drawee, who pays a forged check, for the genuineness of the drawer's signature, is absolute only in favor of one who has not, by his own fault or negligence, contributed to the success of the fraud or to mislead the drawee; and if the payee took the check, drawn payable to his order, from a stranger or other third person, without inquiry, although in good faith and for value, and gave it currency and credit before receiving payment of it, the drawee might recover back the money paid. Of course, the reasoning of that case does not apply to the case at bar, where the member of the drawee firm who honored the check was the husband of the drawee. His attention was called to the apparent forgery, but he exercised his own judgment as to the genuineness of his wife's signature and indorsement, not relying upon or being deceived by defendant's indorsement as payee. Nor is the other case relied on by plaintiff (Title Guarantee & Trust Co. v. Haven, 196 N. Y. 487, 89 N. E. 1082, 1085, 25 L. R. A. [N. S.] 1308, 17 Ann. Cas. 1131) authority in her favor, it holding that:

"The rule, therefore, that he who accepts a negotiable instrument to which the drawer's name is forged is bound by the act, and can neither repudiate the acceptance nor recover the money paid, has no application in behalf of one who has acquired the paper, in the absence of any consideration whatever therefor either present or past."

In the case at bar defendant paid full consideration for the check.

In any event the defendant was a holder of this check in due course under the Negotiable Instruments Law (chapter 43, Laws of 1909). Section 91 thereof provides:

"A holder in due course is a holder who has taken the instrument under the following conditions:

"1. That it is complete and regular upon its face;

"2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

"3. That he took it in good faith and for value;

"4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

Defendant's course answers each of these requirements, and it is therefore a holder in due course, and comes within the general rule followed with practically unanimity ever since Price v. Neal, supra. That the payee of a check may be a holder in due course if he complies with the requirements of the Negotiable Instruments Law has been held, among other cases, in Boston Steel & Iron Co. v. Steuer, 183 Mass 140, 66 N. E. 646, 97 Am. St. Rep. 426, Thorpe v. White, 188 Mass. 333, 74 N. E. 592, and Brown v. Brown, 91 Misc. Rep. 220, 154 N. Y. Supp. 1098.

It follows that plaintiff has no cause of action as assignee of the claim of Bergstrom & Co., the drawees of the check, nor has he any better standing as assignee of the claim of Mrs. Bergstrom, for she has sustained

no loss, having her right of recovery of the $300 in question against Bergstrom & Co.; and neither Freund, who presumably profited by the forgery, nor any other person concerned in the transaction by which the money was obtained from the defendant, or from the drawees, was her agent, nor has she ever ratified their acts.

Judgment is therefore directed in favor of the defendant, with costs. All concur.

PAYMENT OF STOLEN BLANK CHECKS.

S. S. Allen Grocery Co. v. Bank of Buchanan County, Kansas City, Mo., Court of Appeals, January 17, 1916. Rehearing denied February 7, 1916, 182 S. W. Rep. 777.

The plaintiff corporation kept its account in the defendant bank. The president of the plaintiff, while absent from the city, left a number of signed blank checks with the manager of the company to be used in the conduct of the business. The manager permitted the book containing the checks to remain on top of his desk. During the noon hour, while only a stenographer was present, a traveling salesman, known to the company, obtained permission to write a letter at the manager's desk. He stole three of the checks, and filled them out for amounts aggregating $3,300. One of them he cashed at the defendant bank, another he negotiated through a trust company and the third he delivered to a jeweler in payment for a diamond. The collection of the checks overdrew the plaintiff's account by more than $600. While in the ordinary case, a bank is responsible where it pays a stolen blank check filled out without authority, it was held that the bank was not liable in this case because the plaintiff was estopped by its gross negligence from disputing the validity of the checks.

Appeal from Circuit Court, Buchanan County; Thos. B. Allen, Judge.

Action by the S. S. Allen Grocery Company against the Bank of Buchanan County. From a judgment for defendant, plaintiff appeals. Affirmed.

Culver & Phillip, of St. Joseph, for appellant. C. F. Strop and Graham & Silverman, all of St. Joseph, for respondent.

JOHNSON, J. This is an action against defendant bank by the depositor of a checking account to recover a deposit of $2,938.70. On August 27, 1914, plaintiff, the depositor, presented a check for that amount to the bank, but payment was refused on the ground that plaintiff had no funds on deposit, and this suit followed. The answer alleges that defendant "has paid to plaintiff or upon its order all sums of money that have been deposited by plaintiff with defendant." A jury was waived, and after hearing the evidence the court rendered judgment for defendant. Plaintiff appealed.

At the beginning of the trial the parties agreed that on August 27, 1914, plaintiff had a deposit of $2,938.70 with defendant which was payable on demand unless it should be found that defendant was justified in charging against the deposit, as it did, three checks dated August 15, 1914 which bore the signature of plaintiff, and purported to have been

NOTE—For other similar decisions, see Banking Law Journal Digest §151.

drawn to the order of O. J. Rose. These checks, which were for the respective amounts of $2,700.95, $395.60, and $195.15, were paid by defendant on presentation and charged to the account of plaintiff. They had been signed in blank by plaintiff, but had been stolen from its office by Rose, who, by forgery, had converted the signed blanks into checks for the respective sums stated.

Plaintiff, a corporation operating a large retail grocery in St. Joseph, has a president, secretary, general manager, six or seven chiefs of departments, and about fifty employes. Its office is in a mezzanine room six or seven feet above the first floor of the store, and is reached by a narrow stairway from that floor. It is occupied by the officers, i. e., president, secretary, and general manager, and the stenographer and telephone operator. Persons having business with these officers have access to the office, which may be designated as the general office of the company and of the business it conducts. The president, S. S. Allen, alone has authority to sign checks on behalf of the company, and such authority never has been conferred upon any other officer. When Allen found it necessary to be absent from the city, it was his custom to sign a number of blank checks and leave the check book in the custody of the manager, with authority to fill out the blanks and issue checks for use in carrying on the business until his return. He was absent on his summer vacation when the events under consideration occurred, and, as usual, had signed plaintiff's name to a number of checks, and had left the book with Mr. Morrow, the manager. Following his usual practice, Morrow had allowed this book to remain on the top of his desk in the office without instructions to any one respecting its safe-keeping, and, when he had occasion to issue a check, sometimes would draw it himself, and sometimes would have the secretary or stenographer draw it.

On August 15, 1914, Rose, a traveling salesman who had been selling merchandise to plaintiff and was well acquainted with its officer and office employes, especially with the manager, visited the office during the luncheon hour, and found no one there but the stenographer. On being informed that Morrow, for whom he inquired, was out for lunch he asked and was accorded the privilege of writing some letters, and seated himself at Morrow's desk, on which the check book was lying in full view and, of course, within easy reach. When the telephone operator returned from lunch, the stenographer left the office in her charge, and shortly thereafter Rose, apparently having finished his writing, asked for and was given an envelope, into which he placed some papers. Then he departed without waiting for Morrow to return. Some time while at the desk he surreptitiously cut out a sheet from the check book which contained three signed blanks and their stubs. After filling out the blanks Rose went first to defendant bank,where he was known to the paying teller, and presented the check for $395.50, which the teller paid, finding the signature genuine. Next he went to the Empire Trust Company, where he was also known, and presented the check

for $2,700.95, and, at his request, was given a cashier's check, which subsequently he cashed at a bank in Atchison. Then he went to a jewelry store and passed off the third check in payment of a diamond he purchased. After this he disappeared, and thus far has eluded capture. The check for $2,700.95 came to defendant through the clearing house bearing the indorsement of the Empire Trust Company, and was honored by defendant though its payment overdrew plaintiff's account by more than $600. The third check for $195.15 also passed through the clearing house with the indorsement of the jeweler and the Tootle-Lemon National Bank, and was paid by defendant, further increasing the overdraft.

From all the facts and circumstances in evidence the inference is strong that Rose, who two or three days before had received a check from Morrow in payment of an account for potatoes he had sold plaintiff, had obtained knowledge through that transaction of the fact that the check book contained signed blanks and was allowed to remain on top of the manager's desk without any special watch being kept over it. Doubtless his visit to the office at the noon hour was prompted by a criminal motive and his theft of the sheet was not the result of a mere accidental opportunity which arose while he was waiting for Morrow to return.

After paying the last-mentioned check defendant notified plaintiff of the overdraft, and the discovery of the forgeries was a quick result of this notice. The good faith of defendant in paying the checks is not and cannot be questioned, but an effort was made by plaintiff at the trial to show that defendant had been negligent, especially in view of the facts that plaintiff, during the long period of its relation to defendant of depositor, which had continued a number of years, had never before overdrawn its account nor issued a check for so large a sum as $2,700. We shall treat these facts as proved for the purposes of the present discussion, but the inference of negligence drawn from them by plaintiff will be considered in the course of our opinion.

The principal argument of counsel for plaintiff in support of their contention that the loss caused by the crime of Rose should fall upon defendant assumes the good faith and reasonable care of defendant in the transaction, but would charge it with liability on the ground that its title to the checks was that of an innocent holder for value within the technical definition of that term, and that the checks, never having been delivered by plaintiff, did not become valid negotiable instruments, nor acquire any contractual status or obligatory character by the mere affixing of plaintiff's signature to blanks which thereafter plaintiff retained in its own possession until deprived thereof not by or through its own voluntary act, but by theft. Counsel insist that their position has the support of the weight of authority as it stood at the time of the passage of the Negotiable Instruments Act, and is completely and irrefutably sustained by that act, which provides (section 9986, R. S. 1909):

"Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery."

Especially is this argument urged against the validity of the checks of $2,700.95 and $195.15, the payment of which, not being made out of funds of plaintiff on deposit, was voluntary on the part of defendant, and should be regarded as the act of a purchaser, rather than that of a debtor bound by law to honor the demand of his creditor.

The position of defendant is that the relation between the parties, being that of banker and depositor, involved reciprocal duties peculiar to such relationship which lie outside the scope of rules pertaining to holders for value of negotiable instruments, and that one of the duties of plaintiff towards defendant forbade the latter from signing blank checks, except for the sole purpose of directing defendant to pay them, and that in signing such blanks, and then negligently exposing them to theft, plaintiff was guilty of such a breach of duty as to estop it from claiming the checks were not delivered or were not binding contractual orders to pay money which defendant, as banker and debtor, was bound to honor on presentation.

On the theory of plaintiff that the position of defendant is that of a mere purchaser or innocent holder for value, the questions to arise are interesting and difficult of solution. If this were a case where an agent to whom the drawer had delivered a signed blank check had exceeded his authority with reference to filling out the blanks, the drawer would be held liable for such unauthorized acts of his agent under the maxim that, where one of two innocent persons must suffer, the one must be the sufferer who gave occasion for the commission of the wrong (Bank v. Armstrong, 62 Mo. 59), and the delivery of the check to the agent would preclude the application of the provisions of section 9986, R. S. 1909, since they relate only to cases where there has been no delivery of the instrument by the person signing it.

In the present case, though Morrow, the manager, was invested with special authority to fill out and deliver the signed blanks, they remained in the possession of plaintiff, the drawer, and had not been delivered to any person at the time of the theft. The custody of the manager, who was the ranking executive officer of the corporation in the absence of the president, was the custody of the corporation, and, when the blanks were stolen, they were in the condition of being signed, but still in the possession of the corporation which signed them. As a general rule, the delivery of an incomplete negotiable instrument by the maker who signs it is indispensable to the creation of a contractual obligation on the part of such maker. Until delivery the instrument is but so much waste paper. The provisions of section 9986 are merely a legislative enactment of this rule, which had the support of the great weight of authority when the Negotiable Instruments Act was adopted in this state. We think this section was not intended to abrogate or impair other well-

recognized rules by which in certain instances delivery by the maker would be implied, either from authority acctually conferred by him upon an agent, or from conduct which should estop him from claiming that he had not delivered or authorized the delivery of the signed instrument. If Morrow, who had authority to fill out blank checks and deliver them, for the uses of plaintiff's business, had, in excess of that authority converted funds on plaintiff to his own use through the pretended exercise of such authority, plaintiff could not have escaped liability to an innocent holder of such paper, since, under the maxim we have noted, authority to do the excessive act would be implied from the authority actually given.

While estoppels are odious and will not be lightly invoked, they do obtain in instances where it would be manifestly unfair and unjust to suffer a party to gain an advantage by taking inconsistent positions, and they may be based upon conduct which is so careless and grossly negligent as to amount to a willful indifference to the rights of others. In the leading case of Burson v. Huntington, 21 Mich. 416, 4 Am. Rep. 497, it is pertinently observed:

"We do not assert that the general rule we are discussing—'that where one of two innocent persons must suffer,' etc.—must be confined exclusively to cases where a confidence has been placed in some other person (in reference to delivery) and abused. There may be cases where the culpable negligence or recklessness of the maker in allowing an undelivered note to get into circulation might justly estop him from setting up nondelivery, as if he were knowingly to throw it into the street, or otherwise leave it accessible to the public, with no person present to guard against its abduction under circumstances when he might reasonably apprehend that it would be likely to be taken."

It may be conceded for argument, as was held by Bramwell, L. J., in Baxendale v. Bennett, L. R. 3 Q. B. Div. 525, that mere negligence in keeping of a signed blank negotiable instrument which afterward was stolen, filled out, and put into circulation by a thief should not be regarded as the proximate cause of the loss, since the negligent person was not bound to anticipate that a crime would be committed in consequence of his negligence, but obviously it should be held that such a grossly careless act as leaving money exposed and within easy reach of thieves should be regarded as the proximate cause of a loss by theft; and in the supposititous case of a man signing a check in blank and tossing it into a public street, an act evincing such an extreme and reckless departure from the field of ordinary care and prudence, and such a wanton indifference to the rights of subsequent purchasers, or others who might nnocently come into possession of it, would call for the application of the rule of estoppel and preclude the actor from claiming that he had not delivered the instrument.

Was plaintiff in the instant case guilty of conduct sufficient to raise an estoppel against the claim that it did not deliver the checks nor voluntarily put them into circulation? Allen, the president and principal stockholder of the plaintiff corporation, controlled its policies and

business affairs. He was an able, experienced, and careful merchant who had succeeded in building up a large and successful business, and it is with much reluctance that we give expression to the conviction that in adopting and pursuing the course of business under consideration he and the manager, who acted under his orders, were grossly negligent in keeping the book of signed blank checks in such an exposed place without taking any precautions to guard against its spoliation. In the manager's use of the book knowledge was imparted not only to the employes, but to others who visited the office on business, that it contained signed blank checks. That fact may be said to have been publicly proclaimed, and by offering such easy opportunities for the commission of a crime plaintiff was as much a tempter of the criminally minded and morally weak to whom such opportunity might come as it would have been had it left money lying unwatched and exposed in the office, or, as in one of the English cases, had signed a blank check and tossed it into the street. Certainly plaintiff, when it signed the checks, must be held to have anticipated that in the usual course of business they would be issued, and that some of them would pass into the hands of innocent holders for value before presentation to defendant for payment, and it owed a duty to such holders, despite the fact that they were under no legal obligation to acquire title or ownership of such paper, to exercise some care in its custody during the interim between the signing and delivery thereof.

Regarding defendant merely in the light of an innocent holder for value, we think the facts of the case, upon the plainest principles of fairness and justice, estop plaintiff from taking the position that, as to such holder, it did not voluntarily part with the possession of the checks, and therefore in law deliver them.

We have gone thus extensively into this aspect of the case for the reason that we think the position of defendant with respect to the two checks of $2,700.95 and $195.15 should be regarded as that of an innocent holder for value, and not that of a debtor bank to a depositor. We are aware that in some of the cases cited by defendant, e. g., Trust Co. v. Conklin, 65 Misc. Rep. 1, 119 N. Y. Supp. 367, and Snodgrass v. Sweetser, 15 Ind. 682, 44 N. E. 648, no distinction appears to be observed between the status of a bank which pays a forged check signed by the depositor out of funds on deposit to his credit and of a bank which pays such check, thereby creating an overdraft.

The relation of banker and depositor is that of debtor and creditor, and as to a checking account the contractual obligation assumed by the banker is to pay on presentation the checks drawn by the customer against the deposit. But the banker is under no legal or contractual duty to allow a customer to overdraw his account, and as to checks he pays which cause an overdraft may be regarded, not as a debtor who has discharged a legal duty to a creditor, but as a voluntary purchaser or holder for value of negotiable paper.

As to the check for $395.60, which was paid when plaintiff had a larger sum than that on deposit, the relationship between the parties was purely that of depositor and banker—creditor and debtor— and plaintiff owed a duty of care to the bank greater than that which the maker of a negotiable instrument owes to subsequent holders for value. Any negligent breach of that duty which directly results in loss would charge the depositor with liability for such loss. As, for example, it is well settled in this state that, where after delivery of a completed check it is raised by forgery, the loss must fall on the maker if he negligently inserted the amount in a way to admit of the easy addition by forgery of other words and figures. Bank v. Armstrong, 62 Mo. loc. cit. 67.

Considering the facts that a bank must honor the checks of its depositor, and cannot by the exercise of any degree of skillful inspection detect a forgery of a check signed and delivered in blank, we think every consideration of justice and common sense sustains the conclusion that a depositor should affix his signature to a blank check only for the purpose of directing the bank to pay out the money, and that the risk of signing and then keeping a blank check, whether the keeping be careful or negligent, should be considered a risk the maker voluntarily assumed. Trust Co. v. Conklin, supra; Snodgrass v. Sweetser, supra; Putnam v. Sullivan, 4 Mass. 45, 3 Am. Dec. 206. If the exigencies of the depositor's situation create a necessity for the signing of checks in blank, and then keeping them a time before putting them into circulation, why should he not bear the risk made by his own necessities, rather than the banker, who is a stranger to them, and is under the contractual duty to honor his written orders for the payment of money? He is the one who, in the service of his own interest, has given occasion for the commission of the wrong, and, under the familiar maxim, is the one who should bear the consequences.

It follows from the foregoing considerations that, whether defendant be treated as an innocent purchaser of the checks for value or as a banker who paid them in discharge of a contractual obligation to a depositor, the loss of the forgeries should fall upon the plaintiff. Defendant cannot be charged with negligence from the fact that the body of the checks was not in the handwriting of Morrow or any of the plaintiff's officers or office employes. A bank is bound to know the signature of a depositor but is not bound to draw a suspicious inference from the discovery that the body of the check is in unfamiliar handwriting.

Nor was it a thing to excite suspicion that one of these checks was larger in amount than any plaintiff previously had drawn, and that it overdrew the account.

The judgment is for the right party, and is affirmed. All concur.

DEPOSIT OF ESTATE FUNDS IN ADMINISTRATOR'S PERSONAL ACCOUNT.

The Miami County Bank v. State ex rel. Peru Trust Co., Appellate Court of Indiana, March 29, 1916. 112 N. E. Rep. 40.

A bank, which permits an administrator to deposit estate funds to the credit of his personal account, is not liable to the beneficial owners of the funds, where they are misappropriated by the administrator in the absence of knowledge on the part of the bank that such misappropriation was taking place. But if the bank, with the knowledge of the trust character of the funds, applies them to the personal debt, due from the administrator to the bank, or knowingly assists or participates in the misapplication of such funds, it will be liable for the amount so misapplied.

Appeal from Circuit Court, Miami County; Joseph N. Tillett, Judge.

Action by the State on the relation of the Peru Trust Company, administrator, against the Miami County Bank and others. From a judgment for plaintiff, the named defendant appeals. Judgment reversed with instructions.

Cox & Andrews, of Peru, for appellant. Albert Ward and Antrim & McClintic, all of Peru, for appellee.

FELT, P. J. This is an appeal from a judgment of the Miami circuit court, rendered against appellant and John F. Perry as principals and William and H. G. Ballard and Maryland Casualty Company as sureties, in favor of Peru Trust Company, administrator de bonis non of the estate of Fred M. Perry, deceased.

Some of the undisputed facts of the case are as follows: On November 9, 1912, John F. Perry was appointed administrator of the estate of Fred M. Perry, deceased, and qualified as such administrator, and gave bond in the sum of $100, with appellees William and H. G. Ballard as sureties thereon. On March 14, 1913, said administrator gave an additional bond in the sum of $5,000, with appellee Maryland Casualty Company as surety. From 1911 until the trial of this case appellant was a partnership engaged in the banking business, and John F. Perry had a deposit and checking account with such bank. On April 9, 1913, said administrator received a draft for $4,250 from a railway company, payable to the order of "John F. Perry, administrator of the estate of Fred M. Perry, killed near Traft, Cal., November 9, 1912." On April 17, 1913, said John F. Perry, indorsed said draft "John F. Perry, Administrator," and placed it with appellant for collection, and on said day appellant gave John F. Perry credit on his individual checking account for the face value of the draft. On said day John F. Perry owed appellant $2,300, and before making said deposit had to his credit in his checking account the sum of $11.41. On May 16, 1913, appellant applied on the aforesaid indebtedness of John F. Perry, $1,944.39 of said deposit, by charging that amount against his checking account. The balance of

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement § 168.

the funds to the credit of Perry were checked out by him for his individual use from time to time, and on September 13, 1913, his checking account with appellant was overdrawn $30.99. On June 11, 1914, John F. Perry, resigned as such administrator, without accounting to the estate for said funds, and appellee the Peru Trust Company was appointed administrator de bonis non of the aforesaid estate, and thereupon brought this suit against John F. Perry, William Ballard, H. G. Ballard, Maryland Casualty Company, Miami County Bank, and Willard F. Pearson, receiver of the estate of John F. Perry.

Omitting the formal and undisputed facts aforesaid, the finding is, in substance, as follows: That John F. Perry, resigned as administrator on June 11, 1914, his resignation was accepted by the court, and on the same day appellee the Peru Trust Company was duly appointed administrator de bonis non of the estate. That John F. Perry was principal, and Maryland Casualty Company surety, on his bond for $5,000, and no part of the funds of the estate came into the possession of said surety company. That John F. Perry on June 16, 1911, opened an account with appellant and deposited $6,000 and since then has continued to have an account with appellant. That from June 16, 1911, to October 7, 1912, he deposited and checked out more than $34,000, and at the latter date had to his credit $1,039. That he owned valuable real estate in the town of Amboy, where he lived and the bank was located. That on October 8, 1912, he presented to the bank, for the purpose of obtaining a loan, a statement, showing his net assets to amount to $15,000. That appellant believed him to be truthful, honest and solvent. That said Perry at no time had an account with the bank as administrator. That in January, 1914, in a proceeding in court, John F. Perry was found to be insolvent and Willard F. Pearson was appointed receiver for his estate. The facts in regard to the receipt, deposit, and disposition of the draft for $4,250 are found as alleged, and likewise the execution of the two bonds given by John F. Perry. That on April 17, 1913, John F. Perry unlawfully converted and appropriated said sum of $4,250 to his own use, is now insolvent, and has wholly failed, neglected, and refused to turn over to appellee, the relator, any part of said funds. That appellant desired Perry to obtain possession of the funds with which he could pay his indebtedness to the bank, and Perry desired control of the money to use in his individual business, and on April 17, 1913, appellant and said Perry, knowing the draft belonged to the estate of Fred M. Perry, deceased—

"conspired and confederated together for said purpose, and mutually agreed that the proceeds of such draft should be by said bank placed to the credit of the individual deposit account of said Perry, and pursuant to said agreement, the proceeds of said draft were so deposited and $1,944.39 thereof was, by said bank, applied on the individual indebtedness of said Perry, and the balance of said proceeds were withdrawn from said bank and used by said Perry in his individual business."

That appellant, with the knowledge aforesaid, placed the amount of

said draft to Perry's credit in his individual account with the bank, and comingled it with his individual funds, and thereby enabled him to withdraw it on his individual check for his own use, and by reason thereof the whole sum was converted to his individual use and squandered. That during all said time John F. Perry was making deposits in said bank in his personal account and his checks were honored by the bank. That Willard F. Pearson, Perry's receiver, took into his possession property of Perry and reduced the same to cash aggregating over $13,000, of which amount he still has in his possession $3,500.

On the foregoing finding of facts the court stated its conclusions of law: (1) That Miami County Bank by its acts became a cotrustee with John F. Perry in the management of the assests of said estate, and jointly liable with him as principal in accounting for said trust funds. (2) That the administrator de bonis non ought to recover of John F. Perry, Miami County Bank, Ballard and Ballard, and Maryland Casualty Company $5,119.12. (3) That the property of John F. Perry and Miami County Bank should be first exhausted before resort is had to the property of Ballard and Ballard and Maryland Casualty Company. (4) That the residue be recovered as follows: One fifty-first part from Ballard and Ballard, and 50 fifty-first parts from Maryland Casualty Company, but not exceeding the amount of each of said bonds.

An administrator or other person having charge of trust funds may deposit them in bank to the credit of his personal account and check them out in the usual course of business, and the bank, though it has knowledge of the character of the funds so deposited, is not thereby made liable to the beneficial, or actual owners of such funds, in the absence of any knowledge on its part that the funds are being misappropriated or misapplied by such trust officer. If the bank with knowledge of the character of the funds so deposited, applies them to the payment of the personal debt of the depositor, due such bank, or knowingly accepts from him payment of his individual debt out of such funds, or knowingly assists, or permits such depositor to misuse or misapply such funds it may be held liable therefor to the beneficial or actual owner thereof to the amount of the funds so misapplied or misused.

The fact that the bank has knowledge of the character of the funds is an important circumstance which calls for caution in dealing with and honoring checks upon such deposits, though such knowledge is not sufficient, in and of itself, to create liability, or to cause the bank to require the depositor to place such funds in an account separate and apart from his individual account.

Our conclusions already announced make it unnecessary to discuss the other questions considered in the briefs, for the reason that they are, in the main, controlled by the principles above stated.

The judgment is reversed, with instructions to sustain appellant's motion for a new trial, and for further proceedings not inconsistent with this opinion.

CHECKS DRAWN BY AGENT OF DEPOSITOR.

Litchfield Shuttle Co. v. Cumberland Valley National Bank, Supreme Court of Tennessee, March 11, 1916. 183 S. W. Rep. 1006.

The agent of the plaintiff was authorized to draw checks against plaintiff's account in the defendant bank. The agent drew a number of checks, payable to various persons with whom the plaintiff had business dealings. The agent forged the indorsement of the payees on these checks and procured the money thereon directly from the bank or by negotiating them to others. It was held that the bank was not liable for the amount thus wrongfully secured by the agent, for the reason that the bank was misled through the fault of the plaintiff.

Appeal from Chancery Court, Davidson County; Jas. B. Newman, Chancellor.

Suit by the Litchfield Shuttle Company against the Cumberland Valley National Bank. From an adverse decree, defendant appeals. Reversed and dismissed.

F. M. Bass, of Nashville, for appellant. Jordan Stokes Sr., of Nashville, for appellee.

GREEN, J. This bill was filed by the Litchfield Shuttle Company to recover from the Cumberland Valley National Bank the amount of several checks issued by the local superintendent of complainant and alleged to have been paid by the defendant bank on forged indorsements. There was a decree for the complainant below, and the defendant has appealed to this court.

Complainant company, a Massachusetts corporation, owned a mill in Nashville, known as the "Star Block Mills." One Jasper Hooper was superintendent or general manager of this mill. The mill here purchased suitable lumber which was converted into blocks of proper size and these blocks were shipped to the complainant company in Massachusetts, where they were in turn converted into shuttles.

A bank account in the name of the Star Block Mills was kept by the complainant at Nashville with the defendant bank. The superintendent Hooper, had authority to draw checks on this account in the name of the Star Block Mills for the expenses of the local mill and to purchase lumber. So far as the record shows, Hooper was the only person who did have authority to draw checks on this account, and his authority in this respect was not restricted by any specific instructions to the bank.

An investigation of the local concern by the complainant company disclosed that Hooper was short several thousand dollars. Proof introduced by complainant tended to show that Hooper would draw checks on the defendant bank in the name of the Star Block Mills payable to various persons with whom the mills had business dealings. He would then forge the name of the payee and procure the money on the check, directly, from the bank, or else by negotiating the check with others.

One defense interposed by the bank is in these words:

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement, § 199.

"This defendant states that it never at any time paid any check drawn against said account of the Star Block Mills, except pursuant to the terms of said check or pursuant to the direction of those who had authority to represent the said Star Block Mills and direct the payment of the funds to its credit with said defendant."

We think this defense is well made.

As before stated, there was no limitation, so far as the bank was advised, of Hooper's authority to check on the Star Block Mills' account. He was, in the language of the bill, the general manager or superintendent of the Star Block Mills, and he was, so far as it appears, the only person authorized to draw on this account. Therefore Hooper's act in drawing upon the account was the act of the complainant corporation and in the absence of special circumstances, which do not exist here, the complainant cannot, as against the bank, be heard to question Hooper's authority to issue these checks.

So far as the bank was concerned, Hooper had authority to draw the checks in controversy and had authority to put them in circulation. Complainant's auditor testified that the indorsements on the checks in suit were in the handwriting of Hooper. Therefore, when the checks were issued by Hooper, who had authority to draw and issue them, they already bore the indorsements said to have been forged.

The rule announced in Pickle v. Muse, 88 Tenn. 384, 12 S. W. 919, 7 L. R. A. 93, 17 Am. St. Rep. 900, Jackson v. Bank, 92 Tenn. 159, 20 S. W. 802, 18 L. R. A. 663, 36 Am. St. Rep. 81, Chism-Churchill & Co. v. Bank, 96 Tenn. 644, 36 S. W. 387, 32 L. R. A. 788, 54 Am. St. Rep. 863, Farmer v. Bank, 100 Tenn. 187, 47 S. W. 234, and Water Company v. Bank, 123 Tenn. 364, 131 S. W. 447, to the effect that the drawee bank must judge of the identity of the payee and the genuineness of his indorsement at its peril, is subject to this qualification: If the bank is misled by the negligence or other fault of the drawer, and thus induced to pay the wrong person, then it can, as against the drawer, rely on its innocent mistake. 3 R. C. L. p. 594.

The bank may charge its customer with payments made on forged indorsements if "there be circumstances which amount to a direction from the customer to the banker to pay without reference to the genuineness of the indorsement, or circumstances equivalent to a subsequent admission by the customer of the genuineness of the indorsement, in reliance upon which the banker has been induced to so alter his position as to preclude the customer from showing the indorsement to be forged." Morse on Banks and Banking, §474.

These checks appear to have been cashed or put into circulation by Hooper himself, complainant's superintendent. They bore the forged indorsements at the time they were negotiated by Hooper, and in view of this conduct of complainant's representative, within the apparent scope of his authority, we think complainant is not entitled to relief against the bank.

The same result would be reached by an application of the technical

rules of the law merchant, which are now embodied in the Negotiable Instruments Act (chapter 94 of the Acts of 1899).

Section 23 of the statute provided:

"Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment * * * against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority."

Section 65 of the statute provides:

"Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

"(1) That the instrument is genuine and in all respects what it purports to be;

"(2) That he has a good title to it;

"(3) That all prior parties had capacity to contract;

'(4) That he has no knowledge of any fact which would impair the validity of the instrument, or render it valueless. But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee."

When Hooper negotiated these checks, under the provisions of section 65, he warranted that they were genuine and in all respects what they purported to be. Under section 23, in view of the statements heretofore made, Hooper and the complainant are precluded from setting up the forgery of the indorsements.

In discussing the rights of the parties where a bill of exchange was put in circulation containing the forged indorsement of the payees, the Supreme Court of the United States said:

"But in this case the bill was put in circulation by the drawers, with the names of the payees indorsed upon it. And by so doing they must be understood as affirming that the indorsement is in the handwriting of the payees, or written by their authority. And if the drawee had dishonored the bill, the indorser would undoubtedly have been entitled to recover from the drawer. The drawers must be equally liable to the acceptor who paid the bill. For, having admitted the handwriting of the payees, and precluded themselves from disputing it, the bill was paid by the acceptor to the persons authorized to receive the money, according to the drawer's own order." Hortsman v. Henshaw, 11 How. 177, 13 L. Ed. 653.

"Whatever signature or indorsement is upon an instrument when issued by the drawer or maker will be deemed good against him in the hands of a bona fide holder. His delivery of the paper affirms its correctness, and if the name be forged the amount paid on the bill may be recovered by the drawee from the drawer." 2 Morse on Banks and Banking, §477.

To the same effect, see Coggill v. American Exchange Bank, 1 N. Y. 113, 49 Am. Dec. 310; Meacher v. Fort, 3 Hill (S. C.) 227, 30 Am. Dec. 364; Daniel on Negotiable Instruments, §1356.

The sections of the negotiable instruments statute quoted were no doubt rested, in part at least, on the cases just cited, and these cases illustrate the application of the rules announced therein and in the statute.

When the complainant by its general manager issued these checks bearing the indorsement of the several payees, it thereby admitted the genuineness of the signatures, and it is now precluded from asserting to the contrary. When the bank paid these checks thus vouched for by the duly authorized agent of the complainant, such payment was according to the drawer's own order or pursuant to the direction of one who had authority to represent the drawer.

This case is readily distinguishable from Water Company v. Bank, 123 Tenn. 364, 131 S. W. 447. In the latter case, an agent with very limited authority, noted in the opinion, fraudulently indorsed checks payable to his principal and deposited these checks to his individual account in a bank with which his principal had no business relations. The agent then proceeded to check out the deposit so made, for his private purposes. Under this state of facts, we held the bank liable to the principal. The agent was manifestly using his principal's funds for his personal ends, and the facts were such as to put the bank on notice.

In the present case, however, Hooper was superintendent or general manager—a sort of general agent. To him had been intrusted the control of the complainant's Nashville bank account. Considering the character of complainant's business and the extent of Hooper's authority, the defendant bank may very well have concluded that the checks here in controversy represented expenses of the mills paid in cash by Hooper, and that the checks were drawn and indorsed by him as vouchers.

It results that the decree of the chancellor is reversed, and the bill dismissed, at complainant's costs.

NEGOTIABILITY OF NOTE PROVIDING FOR DISCOUNT IF PAID BEFORE MATURITY.

First National Bank of Iowa City v. Watson, Supreme Court of Oklahoma, March 21, 1916. 155 Pac. Rep. 1152.

A note payable in installments three months apart, containing a stipulation for a 6% discount if paid within 15 days from date, is non-negotiable for the reason that it is uncertain as to the amount.

Commissioner's Opinion, Division No. 3. Error from District Court, Pottawatomie County; Chas. B. Wilson, Jr., Judge.

Action by the First National Bank of Iowa City, Iowa, a corporation, against G. W. Watson. Judgment for defendant and plaintiff brings error. Affirmed.

G. A. Outcelt, of Tecumseh, for plaintiff in error. Arrington & Arrington, of Tecumseh, for defendant in error.

BLEAKMORE, C. This is an appeal from the judgment of the district court of Pottawatomie county. The principal question presented for

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement, § 304.

determination is whether the promissory note set out below is negotiable, conformably to the act of June 11, 1919, known as the Negotiable Instruments Law.

"Asher, Okla. 8/9/1910.

"For value received I promise to pay to the order of the Equitable Manufacturing Company (not incorporated) three hundred thirty dollars ($330.00) at Chicago, Ill., in six installments, payable as below:

		Amount	Date paid
Two months after date	10	55.00	
Four months after date	12	55.00	
Six months after date	2	55.00	
Eight months after date	4	55.00	
Ten months after date	6	55.00	
Twelve months after date	8	55.00	

"A discount of 6 per cent will be allowed if paid in full within fifteen days from date. Installments after maturity draw 6 per cent interest.

"Default in the payment of any installment shall, at the option of the payee herein, render the unpaid balance immediately due and payable.

[Signed] G. W. Watson."

Construing a note containing the identical provisions found in the one under consideration, but executed prior to the enactment of the negotiable instruments law, this court, in Farmer's Loan & Trust Co. v. McCoy & Spivey Bros., 32 Okl. 277, 122 Pac. 125, 40 L. R. A. (N. S.) 177, said, in effect, that, in order to be negotiable under the rules of the law merchant, there was required in a promissory note such a degree of certainty that the exact amount to be due and payable at any future time could not be clearly ascertainable at the date thereof, uninfluenced by any conditions not sure of fulfillment. In the syllabus, it is held:

"A note given December 16, 1908, payable in installments three months apart, which contains a stipulation that, if it is paid within 15 days from date, a discount of 5 per cent will be allowed, being uncertain as to the amount necessary to satisfy it at the time of its execution, is nonnegotiable."

Relative to the certainty, as to the sum payable, now required to render an instrument negotiable, the statute provides:

"An instrument to be negotiable must conform to the following requirements: First. It must be in writing and signed by the maker or drawer. Second. Must contain an unconditional promise or order to pay a sum certain in money. * * *" Section 4051, R. L. 1910.

"The sum payable is a sum certain within the meaning of this chapter; although it is to be paid: First, with interest; or second, by stated installments; or third, by stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or fourth, with exchange, whether at a fixed rate or at the current rate; or fifth, with costs of collection or an attorney's fee, in case payment shall not be made at maturity." Section 4052, R. L. 1910.

"In any case not provided for in this chapter the rules of the law merchant shall govern." Section 4050, R. L. 1910.

The sum payable—that is, the amount for which, by the terms of the instrument, the maker became liable, and which he might tender and pay in full satisfaction of his obligation—was, at the date thereof, to a

certain extent, dependent upon his will; he had the right to pay a greater or less sum than the principal; he could, if he saw fit, within the prescribed period, discharge his debt at 94 per cent., or thereafter pay 100 per cent on the dollar. Under such condition, the sum payable was, at the time of the execution of the instrument, clearly indefinite and uncertain.

Unless the rule of the law merchant which obtained in this jurisdiction with respect to the certainty required in the sum payable in a negotiable instrument has been changed by the statute, supra, such rule still governs, and the note in question is nonnegotiable.

In our opinion, it is obvious that the statutory provisions above quoted do not purport to prescribe a rule in this regard different from that recognized by the courts of this state before their enactment, in a case where a promissory note provided for the discount of a principal sum otherwise payable, if, at the option of the maker, payment is made before maturity.

We have examined the record and find no prejudical errors. The judgment of the trial court should be affirmed.

PER CURIAM. Adopted in whole.

PATENT RIGHT NOTES.

Cohn v. Lunn, Supreme Court of Tennessee, February 1, 1916. 182 S.W. Rep. 584.

The statute of Tennessee, making it unlawful to receive a note "for the sale of a patent right, or any interest therein" unless such fact clearly appears upon the face of the note, does not apply to a note given for a quantity of patented articles, together with the exclusive right to sell such patented article in a certain territory. A license to sell patented articles conveys no interest in the patent.

Certiorari to Court of Civil Appeals.

Action by Sam Cohn against J. N. Lunn. A judgment for defendant was affirmed by the Court of Civil Appeals, and plaintiff brings certiorari. Reversed, and judgment entered for plaintiff.

Nathan Cohn, of Nashville, for plaintiff. Jno. T. Allen, of Nashville, for defendant.

NEIL, C. J. On November 9, 1911, one Notman sold to defendant 333 "fuel savers," patented articles. At the same time, as "territorial agent" of his company, the owner of the patent, he arranged to let defendant have an exclusive right to sell these articles and such others as he might order, in the state of Tennessee, a writing being delivered at the time, duly signed by the owner of the patent, and delivered to defendant. In consideration of the articles purchased and the exclusive right to sell in Tennessee, defendant executed to Notman his note for $495, due at a future date. This note was within a day or two thereafter

NOTE.—For other similar decisions, see Banking Law Journal Digest, §362-363.

sold by Notman to the plaintiff, the latter purchasing for a valuable consideration and without notice of any infirmity in the instrument.

The note not being paid at maturity, plaintiff sued defendant before a justice of the peace. After judgment before that officer the case was taken by appeal to the circuit court of Davidson County, and judgment was there rendered in favor of defendant. On appeal to the Court of Civil Appeals that judgment was affirmed. The case was then brought here under the writ of certiorari.

It is insisted in support of the judgment that the note was absolutely void, because executed in violation of chapter 77 of the Acts of 1897 of this state.

Section 1 of this act reads:

"Hereafter it shall be unlawful for any person, either in his own behalf or in a representative capacity to take or receive for the sale of a patent right or any interest therein, a note or other written security given for such right or any interest therein unless it shall clearly appear upon the face of the note or other security that the same is given in the purchase of a patent right or an interest therein."

Section 2 makes the violation of section 1 a felony punishable by imprisonment in the penitentiary for not less than one nor more than five years.

It is insisted that, inasmuch as the note in question was executed in violation of a penal statute, it was absolutely void, not only between the parties, but even as against an innocent holder.

It is clear that a note given in violation of a penal statute would be void as between the parties. Webb v. Tarver and Wife, 2 Tenn. Chan. App. 366; Pinney v. First National Bank of Concordia, 68 Kan. 223, 75 Pac. 119, 1 Ann. Cas. 331, and note.

In Snoddy v. Bank, 88 Tenn. 573, 13 S. W. 127, 7 L. R. A. 705, 17 Am. St. Rep. 918, it was held that a note given for a gaming consideration was void in the hands even of an innocent holder; but in the latter case of Bank v. Chapman, 122 Tenn. 415, 423, 424, 123 S. W. 641, it was said that Snoddy v. Bank was based on an express statute, making the contract void in direct terms.

But it is unnecessary to go into this phase of the case. The real question to be determined is whether the facts show that Notman or his company assigned to defendant a patent right or any interest therein. It is clear that what operated as a consideration for the note consisted only of the 333 fuel savers, and an exclusive license to sell in Tennessee. License to sell patented articles does not convey any interest in the patent. Waterman v. Mackenzie, 138 U. S. 252, 11 Sup. Ct. 334, 34 L. Ed. 923.

In that case, after referring to the fact that under the federal laws the grant to the patentee, his heirs and assigns, is of the exclusive right to make, use, and vend the invention, etc., it is said:

"The monopoly thus granted is one entire thing, and cannot be divided into parts except as authorized by those laws. The patentee, or his assigns, may, by instruments in writing, assign, grant and convey, either: (1) the whole patent, comprising the exclusive right to make,

use, and vend the invention throughout the United States; or (2) an undivided part or share of that exclusive right; or (3) the exclusive right under the patent within and throughout a specified part of the United States. * * * Any assignment or transfer short of one of these, is a mere license, giving the licensee no title to the patent, and no right to sue at law in his own name for an infringement."

Among other matters in that case, the court considered an instrument by which the owner of the patent granted to another "the sole and exclusive right and license to manufacture and sell fountain pen-holders containing the said patent improvement throughout the United States." The court said that this did not include the right to use such pen-holders, at least if manufactured by third persons, and was therefore a mere license, and not an assignment of any title.

In another part of the opinion the court said the grant of an exclusive right under the patent within a certain district which did not include the right to make and use and the right to sell was not the grant of a title in the whole patent right within the district, and was therefore only a license.

"Such, for instance," said the court, "is a grant of the full and exclusive right to make and vend within a certain district, reserving to the grantor the right to make within the district to be sold outside of it. * * * So is a grant of the exclusive right to make and use, but not to sell, patented machines within a certain district. * * * So is an instrument granting the sole right and privilege of manufacturing and selling patented articles, and not expressly authorizing their use, because, though this might carry by implication the right to use articles made under the patent by the licensee, it certainly would not authorize him to use such articles made by others."

Our act of 1897 above referred to forbids the taking of a note "for the sale of a patent right or any interest therein,"unless it shall appear upon the face of the note that it was given "in the purchase of a patent right or an interest therein." The language quoted must be construed in its technical sense, which we have found does not include a license to sell patented articles. We say it must be construed strictly because it is a penal act. For the purposes of the present case it must be construed as if one were before us under an indictment charging him with a violation of this statute.

We are fully aware of the fact that the evil sought to be remedied by the Legislature was the practice of frauds by wandering vendors of patents and interests in patents. It may be also that the purpose was to reach instances wherein merely the sale of territory was made under such a license as we have before us in the present case. If so, the language is not sufficient to cover it, and we cannot stretch the statute to reach the particular case. In the state of Arkansas the evil has been remedied by an act which, in direct terms, makes the note void in the hands of an innocent holder, and this was held constitutional in John Woods & Sons v. Carl, 203 U. S. 358, 27 Sup. Ct. 99. 51 L. Ed. 219. Whether the Arkansas statute would cover a state of facts such as we have before us we do not consider, but only refer to the provision making

void the negotiable instrument in the hands of every one. There is a somewhat similar case arising under a Kansas statute. Allen v. Riley, 203 U. S. 347, 27 Sup. Ct. 95, 51 L. Ed. 216, 8 Ann. Cas. 137. The latter act, however, does not provide that the note shall be void in the hands of an innocent holder.

On the grounds stated, we are of the opinion that the judgment of the Court of Civil Appeals was erroneous, and must therefore be reversed, and that a judgment will be entered here in favor of the plaintiff for the amount of the note and interest, and for the costs, and a reasonable attorney's fee provided for in the face of the note.

COLLECTION OF DRAFT ATTACHED TO BILL OF LADING.

Alexander County National Bank v. Conner, Supreme Court of Mississippi, February 28, 1916. 70 So. Rep. 827.

The statutes of Mississippi provide that a person collecting a draft, with a bill of lading attached, shall retain the money collected for 96 hours after the delivery of the bill of lading. Under this statute, it is held that money so collected does not constitute a trust fund for the benefit of the bank forwarding the draft. The statute is merely intended to give the consignee time to investigate his purchase and, if dissatisfied, to sue by attachment in the local courts. If the collecting bank fails while the money is still in its hands, the forwarding bank cannot claim it as a trust fund, but is entitled to come in merely as a general creditor.

Appeal from Chancery Court, Adams County; R. W. Cutrer, Chancellor.

Bill by the Alexander County National Bank against L. P. Conner, receiver of the First Natchez Bank. From a decree sustaining a demurrer to the bill, complainant appeals. Affirmed.

A. H. Geisenberger and S. Beekman Laub, both of Natchez, for appellant. L. T. Kennedy, of Natchez, for appellee.

SYKES, J. Appellant filed its bill in the chancery court of Adams county, praying that a lien be fixed upon funds in the hands of the receiver of the First Natchez Bank for the amounts herein below set out, and that said receiver be required to pay these amounts out of any funds in his hands as receiver. The facts alleged in the bill are, in substance, as follows: During the month of October, 1913, Antrim & Co. of Cairo, Ill., shipped a car of grain to the firm of R. Viener, of Natchez, Miss. Draft for $574.25 against consignee in payment for same was attached to the bill of lading, and draft and bill of lading were sent by the appellant bank to the First Natchez Bank for collection. Said draft was paid to the First Natchez Bank when presented. On October 27, 1913, the

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §124.

First Natchez Bank sent draft to appellant bank for the said sum, drawn upon the American National Bank of St. Louis, Mo. This draft was duly presented for payment by the appellant, but was protested for non payment because the First Natchez Bank was placed in the hands of a receiver on October 29, 1913. Shortly after this shipment, and also in October of the same year, the same firm shipped to Postlethwaite & Stewart, of Natchez, Miss. a car of grain. A draft for $433, the purchase price, with bill of lading attached, was drawn on consignees and placed in the hands of appellant bank for collection and sent by appellant to the First Natchez Bank. This draft was presented by the First Natchez Bank on the 27th or 28th of October and paid by the consignee. No draft for this amount was forwarded by the First Natchez Bank to the appellant bank. On October 29, 1913, said First Natchez Bank went into the hands of a receiver, having in its hands at that time $15,000, more or less, in cash. A demurrer was interposed to the bill of complaint and sustained, from which action of the chancellor this appeal is prosecuted.

It is the contention of the appellant that the amounts collected as above set forth were trust funds which increased the assets of the bank to that extent, and that a lien should be fixed on said assets in the hands of the receiver for said amount; that this is true both under the common law and under section 4852, Code 1906, which is as follows:

"A bank or other person collecting a draft with a bill of lading attached, shall retain the money so collected for the space of ninety-six hours after the delivery of the bill of lading."

The above section of the Code, however, in no way alters or changes the common-law rule. This section was enacted for the purpose of having the collecting bank remain the debtor of the consignor or its assignee for a sufficient length of time, during which the consignee could examine his purchase and bring suit, if necessary, at his domicile by attachment and garnishment of the funds in the hands of the collecting bank. But the relation of debtor and creditor between a consignor or his assignee and the collecting bank exists under this statute just as under the common law. We adhere to the ruling announced by this court in the case of Billingsley v. Pollack, 69 Miss. 759, 13 South. 828, 30 Am. St. Rep. 585, wherein the court says:

"We are well pleased with these decisions, and reaffirm the obvious principle supporting them, but are unwilling to establish the proposition that a correspondent of a bank, whose claim it has collected and failed to pay over, has an equitable lien on all the assets of the bank, securing precedence over all other creditors of the bank."

The appellant in this case has no lien whatever on any moneys or assets in the hands of the receiver, but is simply a general creditor of the defunct bank and should be treated as such.

Affirmed.

BANK PAYING UNACCEPTED DRAFT FOR BENEFIT OF CUSTOMER.

Central Exchange Bank v. Williams, Supreme Court of Oklahoma, March 21, 1916. 156 Pac. Rep. 347.

Where a bank pays a draft for the use and benefit of its customer and at his instance and request, the customer cannot be heard to say, in an action brought by the bank that there was no liability upon the part of the customer for the reason that the draft was not accepted in writing by him.

Commissioners' Opinion, Division No. 3. Error from County Court Woodward county; Clyde H. Wyand, Judge.

Action by the Central Exchange Bank against O. D. Williams. Judgment for defendant, and plaintiff brings error. Reversed and remanded for new trial.

D. P. Marum, of Woodward, and E. R. Hastings, of Oklahoma City, for plaintiff in error. C. W. Herod, of Woodward, for defendant in error.

HOOKER, C. The bank alleges that on the 27th of April, 1912, the defendant in error had on deposit with it the sum of $139.65, and that between said date and the institution of this action the said defendant in error deposited with it the sum of $1,102.08, which made the total credit of $1,241.73 made by the defendant in error, all of which was shown upon the books of the bank, and that between the 27th of April, 1912, and the 8th day of July, 1912, it had paid out at the request of the defendant by check and drafts $1,338.71, which made a balance due by the defendant in error to the bank of $96.98. To recover this sum, the plaintiffs in error filed a suit in the justice's court against the defendant in error for money paid for his use and benefit and at his instance and request.

The defendant in error admitted the deposits made by him with the bank, and admitted all of the payments by the bank were authorized save and except one draft for the sum of $93.83 drawn by one F. B. Hunter, on or about May 15, 1912, which sum had been charged by the bank to the account of the defendant in error, and it was contended in this action that the same was done without any authority and without the consent of the defendant in error and in violation of the Revised Laws of 1910, §§ 4182 and 4183. As we view the record in this case, there is but one question involved, and that is a question of fact, whether the defendant in error authorized the bank to pay said draft and charge the same to him. This is not an action upon the draft; for, if the bank was authorized to pay the draft and did so, the liability accruing by virtue of the draft is at an end, and the cause of action by the bank against the defendant in error for having paid the same is for money paid for the use and benefit of the defendant in error. From the record it appears that this cause was tried and decided by the lower court upon

the theory that the bank could not maintain an action to recover money thus paid by it for the defendant in error, for which said draft was drawn, until it had been established that the defendant in error had accepted the draft in writing. For the reasons above stated, this was error.

We therefore recommend that this cause be reversed and remanded and a new trial granted to the plaintiff in error.

PER CURIAM. Adopted in whole.

CONDUCTING SAVINGS BANK IN ROOMS OF NATIONAL BANK.

State ex rel. Chamberlain v. Morehead, Supreme Court of Nebraska, December 23, 1915. 155 N. W. Rep. 879.

Under the statutes of Nebraska the banking board has power to refuse a savings bank charter where it appears that the proposed bank is to be conducted in the same rooms, or in rooms adjoining those occupied by a national bank and where it further appears that the officers and directors of the two banks will be substantially the same persons.

Appeal from District Court, Lancaster County; Cornish, Judge.

Mandamus by the State, on the relation of W. Chamberlin, whose true name is Walter Chamberlin, and others, against John H. Morehead and others. From judgment for relators, defendants appeal. Reversed and dismissed.

The Attorney General, for appellants. W. T. Thompson, of Lincoln, for appellees.

MORRISSEY, C. J. Relators made application to the state banking board for a charter for a savings bank, to be known as the State Savings Bank of Clarks, Neb. The preliminary steps provided by the statute were taken in due form, and no objection was raised as to the character of the parties, their financial ability, or the form of the application, but the banking board ascertained that, if the charter were granted, the relators intended to conduct the business of the state savings bank in the same room, or in a room immediately adjacent to the room, occupied by the First National Bank of Clarks, and that the officers and directors of the two banks would be the same persons, or practically so. Some time preceding this application, the banking board had before it a similar application which it rejected, after adopting a resolution declaring it unwise, unsafe, and against public policy to permit the operation of banks as relators proposed, and declaring it the fixed policy of the board that in the future, charters under such circumstances would not be granted.

On consideration of relators' application the board adhered to its policy theretofore announced and refused to issue a charter.

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §53, 54.

This action was then commenced in the district court of Lancaster County, and, on hearing, a writ of mandamus issued directing respondents to forthwith convene, approve the articles of incorporation, and issue the charter as prayed. Respondents have appealed. No question of fact is in dispute. But we are called upon to determine whether the board had discretionary power to refuse to grant the charter under the provisions of the banking act.

By the Nebraska Banking Act, article 1, c. 6, Rev. St. 1913, banking is declared to be a quasi public business, subject to regulation and control by the state, and it is made unlawful to engage in this business, except by means of a corporation duly organized for that purpose. The act creates a banking board, giving it general supervision and control of all banks coming within its provisions. It is made the duty of the Governor to appoint a secretary for the board, and examiners, who are empowered " to make a thorough examination into all the books, papers, and affairs of any corporation, transacting a banking business in this state." Section 8. These examiners are empowered to summon witnesses and administer oaths, and it is made their duty to make a detailed report to the banking board. If, upon examination, a bank is found to be insolvent, " or is conducting its business in an unsafe or unauthorized manner, or is endangering the interests of its depositors, then such examiner shall have full power and authority to hold and retain possession of all the money, rights, credits, assets, and property of every description belonging to such bank, * * * until the state banking board can receive and act on the report made by the examiner of said bank, and have a receiver appointed as hereinafter provided." Section 10.

There is further provision for the issuance of a certificate stating that the banking corporation has complied with the laws of this state for the protection of bank depositors, and that the depositors are protected by the depositors' guarantee fund, and that every banking corporation receiving such certificate shall conspicuously display the same in its place of business and " may print or engrave upon its stationery words to the effect that its depositors are protected by the depositors' guarantee fund of the state of Nebraska." Section 16 provides that after the parties have taken the preliminary steps which relators took in this case, " then the state banking board, if, upon investigation, it shall be satisfied that the parties requesting said charters are parties of integrity and responsibility, shall * * * issue to said corporation the certificate provided for in section 14 and a charter to transact the business provided for in its articles of incorporation."

Relators contend that this provision is mandatory; that it being admitted that the parties had complied with all the terms of the act and are men of integrity and responsibility, the board has no power to inquire further into the manner or method of doing business. This is evidently the view taken by the district court, and the section, standing alone, may bear that construction. But the statute on banking is a complete

and comprehensive act. It was enacted by the Legislature of 1909 after it had been drafted by able lawyers, selected specially for that purpose, and after the fullest discussion and most careful research. Its purpose cannot be questioned. It aimed to take the banking business out of private hands and place it under state control, to the end that failure might be made unlikely and a general panic almost impossible. And its right to do so under the police power has been upheld by the Supreme Court of the United States. Shallenberger v. First State Bank of Holstein, 219 U. S. 114, 31 Sup. Ct. 189, 55 L. Ed. 117. The act provides not alone for the investigation that is to be made under section 16, before the issuance of a charter, but for a continuing supervision. Banks operated under the provisions of the act are required to carry a certain reserve, and it is provided that no part of said reserve fund shall be kept in any depository which, in the opinion of the state banking board, would not be a proper and safe custodian thereof. The board is authorized to call upon the bank in case its reserve falls below the proper amount to make good the deficiency, and its failure is made cause for the appointment of a receiver. The act fixed a maximum rate of interest; two or more banks transacting business in the same city are forbidden to use the same name, or names so nearly alike as to cause confusion in transacting business, and in case such condition did exist at the time the act became effective the board is empowered to require such change or modification as will prevent the confusion.

Section 44 provides:

"For the purpose of providing a guarantee fund for the protection of depositors in banks, every corporation engaged in the business of banking under the laws of this state shall be subject to assessment to be levied, kept, collected and applied as hereinafter provided."

By subsequent provisions, the banking board is authorized to make such adjustment of rates and assessments to be paid by any bank engaging in business, as will require such bank to contribute to the depositors' guarantee fund a just and equitable sum, and all banks are required to set apart, keep, and maintain the amount thus fixed and levied; the same to be payable to the state banking board on demand. It is further provided that if the depositors' guarantee fund be depleted, or reduced below a certain amount, the state banking board shall make a special assessment against the capital stock of each of the banks covered by the banking act.

Section 49 provides:

"Whenever it shall appear to the state banking board, from any examination or report provided for by this article, that the capital of any corporation transacting a banking business under this article is impaired, or that such corporation in conducting its business in an unsafe or unauthorized manner, or is endangering the interests of its depositors."

—the banking board shall proceed to secure the appointment of a receiver to wind up its affairs. If it may do this with a bank that is a going concern, why not, before the issuance of a charter, take precautions to see that the business of the corporation will be conducted in a safe

manner and that the interests of the depositors will be fully protected?

Upon the failure of any bank to pay its depositors in full, the guarantee fund, under the direction of the banking board, immediately becomes available for such purpose, and, as all of the banks operated under the jurisdiction of the banking board contribute to this fund, directly or indirectly, its conservation affects all of the depositors in these banks. Again it may be said that when two banks are conducted in the same room, and managed by the same people, depositors may easily be mistaken as to which bank has their account. They may believe that it is deposited under the provisions of this act, while in reality their account is carried in the other bank. Again it may complicate examinations. National banks are not subject to examination by the state examiners. State banks are not under the control of the federal government nor subject to examination by their examiners. Experience has shown that where the banking business is conducted as proposed by the relators, it is easy to transfer funds from one bank to another. If one of the banks finds itself in straitened circumstances, the temptation is great to draw on the other bank to tide it over an examination. Indeed, it is stipulated in the record that, in the year 1913, where a national bank and a state savings bank are conducted under conditions such as are proposed, the failure of the national bank caused the failure of the state bank with a loss to the guarantee fund in the sum of $54,000.

If standing alone and construed literally, section 16 might bear the interpretation for which relators contend. But in addition to the provisions already pointed out, section 60 reads:

"The state banking board shall prescribe all such forms as may be useful or necessary in carrying out the provisions of this article, and shall have power to make such rules and regulations, not inconsistent with the provisions of this article, as may be necessary or proper to carry it into effect according to its true intent."

When the general rule of statutory construction is applied and section 16 is considered in connection with the other provisions, it must be held that the board is vested with authority not only to correct evils that may creep into the management of an existing bank, but to guard against dangers that may threaten institutions about to be formed.

"The power to compel, beforehand, co-operation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end." Noble State Bank v. Haskell, 219 U. S. 104, 112, 31 Sup. Ct. 186, 188 (55 L. Ed. 112, 32 L. R. A. [N. S.] 1062, Ann. Cas. 1912A, 487).

To give section 16 the construction asked by relators would be to narrow, if not to nullify, the provisions of the act vesting the board with power to take all steps necessary for the proper regulation of the banking business.

If the guarantee fund does not directly guarantee the deposits in the national bank, yet the fact that in the same room, or in the room adjacent, the same parties are operating a state bank under the guarantee

fund, may lead the general public to believe that the money deposited in the national bank is also guaranteed. We think the intention of the Legislature was to vest the banking board with general control and with authority to do all things reasonably necessary for the protection of depositors throughout the state. The board also stands in the nature of a trustee for this guarantee fund, and it is its duty to take such precautions as may be necessary to protect its integrity. The terms " general supervision and control " vest the banking board with duties of a very high order, and they are not to be perfunctorily discharged, but to be administered with the highest decree of intelligence and discretion.

It is customary for Legislatures to grant to administrative bodies of this character the power to adopt rules, by-laws, and regulations reasonably necessary to carry out the purpose for which they are created, and this grant is not an improper delegation of authority. Blue v. Beach, 155 Ind. 121, 56 N. E. 89, 50 L. R. A. 64, 80 Am. St. Rep. 195 and cases cited. This is held generally to be the rule in matters coming within the police power of the state. That the banking business comes within that power is no longer an open question.

" The police power extends to all the great public needs (Camfield v. United States, 167 U. S. 518 [17 Sup. Ct. 864, 42 L. Ed. 260]) and includes the enforcement of commercial conditions such as the protection of bank deposits and checks drawn against them by compelling cooperation so as to prevent failure and panic." Noble State Bank v. Haskell, supra.

The business of banking coming within the police power of the state, the same rule of construction may be applied to banking acts and to rules and regulations established by banking boards as applies to acts creating other administrative bodies coming within the police power. The Supreme Court of Judicature of Indiana, in discussing this phase of the question, in Blue v. Beach, supra says:

" While it is true that the character or nature of such boards is administrative only, still the powers conferred upon them by the Legislature, in view of the great public interests confided to them, have always received from the courts a liberal construction, and the right of the Legislature to confer upon them the power to make reasonable rules, by-laws, and regulations, is generally recognized, by the authorities."

In that case the court was discussing rules and regulations made to protect the public health, but these rules and regulations are made under the police power of the state, and the same rule may reasonably be applied to all boards acting within that power. The rule adopted and followed by the banking board appearing to be a reasonable and salutary one, its action will not be disturbed. The judgment of the district court is reversed and the cause dismissed.

Reversed and dismissed.

Rose, J., not sitting.

INDORSER UNABLE TO READ OR WRITE.

First National Bank v. Soltz, Kansas City (Mo.) Court of Appeals, March 13, 1916. 183 S. W. Rep. 675.

The fact that an indorser of an instrument, waiving demand, notice and protest, could neither read nor write, beyond the making of his signature, is immaterial unless it appears that the indorsee was aware of the fact.

Appeal from Circuit Court, Jackson County; Thomas J. Seehorn, Judge.

Action by the First National Bank against M. Soltz. From a judgment for plaintiff, defendant appeals. Affirmed.

ELLISON, P. J. This action is on a promissory note executed by the Eastern Iron & Supply Company and C. D. Kelman & Co. to the defendant. Afterwards defendant sold and indorsed the note to plaintiff, and waived demand, notice, and protest. The note not being paid at maturity, plaintiff brought this action and recovered judgment in the circuit court.

So far as disclosed by the record, there is no ground upon which to ask for a reversal of the judgment. As we gather from defendant's statement of the case, much of which is not relevant, he claims to have been released, but that question was properly submitted to the jury by an instruction asked by him, and the finding was against him.

But defendant complains of the refusal of an instruction to the effect that if defendant could not read and write, and did not understand or intend to sign the provisions of the indorsement, but simply intended to sign his name in blank, and that plaintiff afterwards extended the time of payment and failed to notify him of such extension, and failed to notify him when the note was dishonored by non-payment, then the verdict should be for defendant. The instruction should have included a submission whether plaintiff knew he could not read and write. It seems he could and did readily sign his name. He kept a checking account with plaintiff, and if he desired protection on account of his inability to read and write, he should have advised plaintiff of his disability. Furthermore, it was his duty as a business man (which the evidence shows him to be) to have ascertained what he was signing. Again, the instruction is based on the idea that he was merely signing his name in blank; whereas all the evidence shows he was signing a written contract of indorsement. The instruction likewise submitted the question of an extension of time of payment without his knowledge. There was no evidence of that.

There was ample evidence justifying the judgment, and defendant's demurrer was properly overruled. We would have been justified in dismissing the appeal on account of defendant's failure to comply with our rule 29 (178 S. W. vii), but concluded to dispose of the case.

The judgment is affirmed. All concur.

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §331.

Modern Banking and Trust Company Methods

BY

WILLIAM McCHESNEY MARTIN, A.B., LL.B.

CHAPTER XVII. (Continued).

The method of recording the savings deposits and withdrawals on the bank's books is the same in principle as the process previously explained in connection with checking accounts. The records used, of course, differ in certain details, to conform to the needs of the savings department.

SAVINGS TELLERS' RECORDS.

The first record of the deposits and withdrawals on the bank's books is made by the savings tellers. Each teller has a sort of blotter, in which he enters the amounts of all the deposits and withdrawals made each day. The purpose of this record is to show the receipt and disposition of all items that pass through the teller's cage and to enable him to keep track of his cash. It also serves as a check on the work of the bookkeepers and other tellers. In some banks, this record is very simple in form, while in other banks it is quite a complex record. This depends largely on the size of the bank and the arrangement it has for distributing the items received by the different tellers. Some banks have a distributing teller, to whom each teller charges items received which should go to some other teller or department, and he does the distributing. It is apparent that in banks where this procedure is followed, the teller's record is quite simple. In a great many banks, however, it is the custom for the different tellers to charge the items direct to the proper tellers, thereby necessitating many different entries. When this method is used, in order to avoid errors and expedite the work of the teller, it is a good plan to have his record contain columns and headings for all possible entries, so all he will have to do is to insert the amounts of the items. If the teller does both receiving and paying, the record can be easily arranged so as to cover both. However, where there are separate paying and receiving tellers, different records are generally used, each especially designed for the teller using it. The following illustrations show the different forms used by the savings paying and receiving tellers in the larger banks and trust companies which allow the tellers to charge the various items direct to the other tellers. These forms, however, can be adapted to the needs of any bank, simply by eliminating the unnecessary columns or adding others.

SAVINGS PAYING TELLER'S BLOTTER.

In the following form of savings paying teller's blotter, the amounts of the savings withdrawals are entered in the column on the right-hand side of the page. This is usually done by pasting in an adding machine list of

PAYING TELLER'S CASH

SAVINGS DEPARTMENT.

St. Louis, _____ 191__

Current Paying Teller Cr.	Current Exchange Teller Cr.	Current Paying Teller Dr.	Exchange Items	Clearing House Items	Savings Withdrawals
Current Receiving Teller No. 1 Cr.					
Current Receiving Teller No. 2 Cr.	Savings Receiving Teller Cr.				
	General Credits	General Debits			

Balance		Total Withdrawals			
Cur. Pay. Tel. Cr.					
		Cur. Pay. Tel. Dr			
Cur. Rec. Tel. No. 1 Cr.					
Cur. Rec. Tel. No. 2 Cr.		Exchange Items			
Exchange Tel. Cr		Clearing House			
Sav. Rec. Tel. Cr		General Debits			
General Credits					
		Balance			

the amounts. A great deal of time and labor is saved by pasting in the list in this way. Some banks insert only the total amounts of all the withdrawals in this column, but it is a good idea for this record to show the amount of each withdrawal, especially since the adding machine list showing each withdrawal, as well as the total, can be pasted in with so little trouble. This makes a complete record in permanent form, and can be easily referred to. In case the bookkeeper does not balance with the teller at the close of the day's business, he can check his withdrawal receipts with the teller's list to see if a ticket is missing or an amount has been entered incorrectly.

In the debit columns of this form, the savings paying teller enters the amounts of all items which he may have occasion to charge to the other tellers, and in the credit columns he enters the amounts of all items he receives from them. The checks which he cashes for depositors, drawn on some other bank, he enters under the heading "Clearing House Items," or "Exchange Items."

After all the day's transactions have been entered the summary in the lower left-hand corner of the page is filled in. All the credits are totaled and added to the previous day's balance. All the debits are totaled and added to the total amount of withdrawals and Clearing House and exchange items. Then the total of all the withdrawals and debits is subtracted from the total of the previous day's balance and all credits. The difference should equal the amount of the teller's cash on hand. This balance is entered on the teller's daily cash sheet, and together with the balances of the other tellers, makes up the cash balance of the whole bank for the day.

The savings paying teller generally carries only enough cash to supply the probable withdrawals. Any excess he turns over to the current account paying teller, and if he has not enough to meet the demand, he obtains more cash from the current account paying teller.

SAVINGS RECEIVING TELLER'S BLOTTER.

A form of savings receiving teller's blotter is given on the following page.

The back of this form is left blank with the exception of a place for the date and the heading ' 'Deposits." Under this heading is pasted the adding machine list of the amounts of the deposits made during the day. The book is arranged in this way so there will be plenty of space in which to enter the deposits. In smaller banks, of course, a column for deposits could be placed on the right-hand side of the first page, the same as the savings paying teller's blotter. Each page could then be ruled the same, so as to hold a day's transactions.

In the debit columns of this form, the savings receiving teller enters the amounts of all items which he may have occasion to charge to other tellers, and in the credit columns he enters the amounts of all items he may receive from them.

SAVINGS RECEIVING TELLER'S CASH

St. Louis,_____191__

Current Receiving Teller's Credits	Exchange Credits	Coupon Teller's Debits	General Debits	Savings Paying Teller's Debits	Current Paying Teller No. 1 Debits	Current Receiving Teller's Debits	Current Receiving Teller's Debits

Savings Paying Teller's Credit	General Credits	Exchange Teller's Credits	Current Paying Teller No. 1 Debits

	Balance		Coupon Teller's Debits
	Deposits		General Debits
	Current Receiving Teller's Credits		Savings Paying Teller's Debits
	Savings Paying Teller's Credits		Current Paying Teller No. 1—Debits
	Exchanges Credits		Current Paying Teller No. 2—Debits
	General Credits		Current Receiving Teller's Debits
	Exchange Teller's Credits		

After all the entries for the day have been made, the teller fills in the summary in the lower left-hand corner of the page and ascertains his balance, which should agree with the amount of cash he has on hand. This balance he enters on the teller's daily cash sheet, the same as the paying teller.

The savings receiving teller, as a rule, keeps no money on hand, except a small amount for the purpose of making change. Each day he turns over practically all the cash received to the savings paying teller.

SAVINGS CASH BOOK.

After the savings deposits and withdrawals have passed through the teller's cages, they are recorded by the bookkeeper in what is generally called the Savings Cash Book. This is a simple record, providing for the numbers of the accounts and the amounts of the deposits and withdrawals. It is the subsidiary book to the savings ledger, and with it the ledger is periodically balanced. The purpose of this record is to show in chronological order the amounts of the deposits and withdrawals made each day, and also the amount of money on deposit in the savings department at the close of business each day. The usual form of this book is shown in the following illustration:

Savings Dept. Checks and Deposits

NO.	CHECKS	DEPOSITS	NO.	CHECKS	DEPOSITS	NO.	CHECKS	DEPOSITS

In some banks, the tellers hand the deposit tickets and withdrawal receipts to the bookkeeper at intervals during the day, while in others, they are not turned over to the bookkeeper until the close of the day's business.

As soon as the bookkeeper receives the deposit tickets and withdrawal receipts, he assorts them according to number of account and proceeds to record them in the Savings Cash Book. Under the heading "Deposits," he enters the amounts of all the deposits, and under "Checks," the amounts of all the withdrawals. The numbers of the accounts appearing on the tickets he inserts under the heading "No."

After all the deposits and withdrawals made during the day have been entered in the Savings Cash Book, the columns for deposits and withdrawals are added up and the totals are verified with the tellers' figures. The difference between the two columns is then ascertained and this is either added to or subtracted from the previous days' balance, to obtain the net balance of savings deposits on hand. If the deposits for the day exceed the withdrawals, there has been a gain, and the amount of

the gain is added to the previous day's balance. If the withdrawals exceed the deposits, there has been a loss, and the amount of it is subtracted from the previous day's balance.

As the general bookkeeper keeps a controlling account of savings deposits and withdrawals on the general books, the total amount of the deposits and the total amount of the withdrawals, as well as the net balance of the Savings Cash Book, are furnished him at the close of business each day. The balance of the Savings Cash Book must agree with the balance of the account on the general ledger, and in this way the Savings Cash Book is balanced with the general books each day.

The balance of the Savings Cash Book should also always agree with the total of the amounts to the credit of the accounts in the Savings Ledger. As a rule, the ledger is not balanced each day with the savings cash book and the general books, but this is done once a month or once every two months. However, the postings in the ledger are proved each day, as will be later explained.

SAVINGS LEDGER.

The principal book used for recording the deposits and withdrawals is the Savings Ledger. There are various kinds of ledgers in use, some of which are described in Chapter XVI. However, the one most generally used for savings accounts is the Three Column Balance Ledger, which provides columns for the date, debits, credits and balance.

In the smaller banks, one or two ledgers will doubtless suffice for the savings accounts, but where the number of savings accounts is great it is necessary to apportion them among a number of ledgers, perhaps a dozen or more. When this is done, each ledger has its own subsidiary cash book.

The savings ledger may be either bound, or in the form of loose leaves inserted in a binder, or it may consist of cards.

THE BOUND LEDGER.

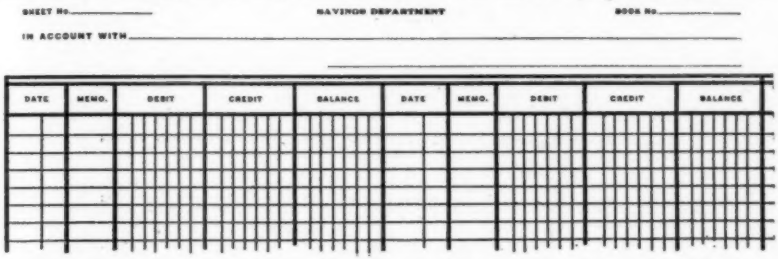
In the past, it has been the custom to use the bound form of ledger providing for about two accounts to a page. The use of bound volumes, however, is fast giving way to the use of loose-leaf ledgers or cards. The disadvantages of the bound ledger are many. One great objection is that it soon gets to contain too many "dead" pages. This makes it too cumbersome for practical use, and it becomes necessary to transfer the open accounts in it to a new ledger, which entails considerable work and waste of ledger paper. Then again, the space for an account often becomes filled, and it is necessary to carry the account forward to a new page, which is not desirable.

LOOSE-LEAF LEDGER.

There are many advantages to be gained by using the loose-leaf ledger for savings accounts. As each sheet is used for one account, when an account is closed, the sheet bearing it can be taken out and filed away. The sheet is also generally arranged so as to contain a double

set of columns on each side, thereby affording enough space to last for a considerable length of time. In the event that both sides should become filled, another sheet can be inserted, the first sheet being numbered 1 and the second sheet numbered 2. Then again, the loose-leaf ledgers can be run off quicker and more easily on the adding machine than the bound ledgers, because no "dead" pages are encountered. Another argument in favor of loose-leaf ledgers is the saving in binding, which is considerable in some of the larger institutions.

The following illustration shows the Three Column Balance Ledger in loose-leaf form, as used by many of our up-to-date savings departments:



This ledger is usually about 12 inches long, including the binding space, and about 6 inches wide. It is punched on the left-hand side so as to be inserted in a loose-leaf binder

CARD LEDGERS.

The card ledgers are also becoming quite extensively used, especially among the larger banks and trust companies. The kind of ledger generally used for the card system is the same as the one shown above, except that each side contains only a single set of columns. The cards are usually about 5 inches wide and 8 inches high. As a rule, they have numbered tabs on the top, for convenience in picking out the card wanted. The cards are arranged in numerical order, with index cards and are carefully kept in trays or drawers specially constructed for that purpose.

The advantages accredited to the loose-leaf ledgers are also applicable to the card ledgers. Some banks, however, prefer the loose-leaf ledger because in it they have a semi-bound volume.

POSTING.

The posting of the amounts of deposits and withdrawals is made direct from the deposit tickets and withdrawal receipts to the ledger.

The bookkeeper enters the amount of each deposit in the column headed "Credit" and extends the new balance. The withdrawals he enters under "Debit" and also extends the new balance. When making these extensions, he carefully compares the balance of the depositor's pass book, as shown by the deposit ticket or withdrawal receipt, with the depositor's new balance in the ledger, to see if they agree. If they do not agree, he knows that an error has been made or a fraud committed, and he immediately proceeds to locate it.

All entries are made in the ledger in black ink, except interest, which is entered in the credit column in red ink on the dates for crediting interest.

PROVING THE POSTING.

The posting in the ledger should be proved each day, to see if any errors have occurred in the work. The method of proving the posting as used by most banks, is quite simple. To assist in the work, they have printed on a slip of paper about 3½ inches wide and eleven inches long columns for the old balances and new balances of the accounts affected during the day. This form is usually as follows:

DATE_____

LEDGER NUMBER_____

OLD BALANCE			NEW BALANCE		

As the bookkeeper posts from the deposit tickets and withdrawal receipts to the ledger, he enters on this slip the old balance and the new balance of each account affected. The amount of the deposits, as shown by the Savings Cash Book, is then added to the old balances and the amount of the withdrawals, as shown by the Savings Cash Book, is added to the new balances. The total of each column is then obtained, and if the postings and extensions have been made correctly, the totals of both columns will agree.

DEPOSIT AND WITHDRAWAL TICKETS SHOULD BE CAREFULLY PRESERVED.

The deposit tickets and withdrawal receipts for each day should be carefully filed away in their numerical order, so they can be easily referred to at a subsequent date if desired. They are usually bound together with wire or some permanent fastener. The deposit tickets and withdrawal receipts are generally arranged separately.

(*To be continued.*)

THE LAW OF BANKING.

A COURSE OF STUDY IN THE LAW PERTAINING TO BANKS AND BANKING TRANSACTIONS.

BY JOHN EDSON BRADY OF THE NEW YORK BAR.

VII. COLLECTION OF CHECKS. (*Continued*)

§176. Title to Check Deposited in Bank.

When a bank holding a check for collection fails, it frequently becomes necessary to determine the ownership of the check or its proceeds in order to fix the rights of the parties to the transaction. This question is usually determined by ascertaining the intention of the parties as indicated by the surrounding circumstances. An intention that the title to a check shall remain in the depositor and not pass to the bank is shown by an indorsement "for collection," by an understanding that the bank may charge back the amount in case of non-collection, by a refusal by the bank to credit the deposit as cash, or a refusal to permit the depositor to draw until the proceeds have been collected. The intention that title shall pass to the bank is indicated by an indorsement in blank, or a general indorsement, by the fact that the deposit is credited as cash or that the depositor is permitted to draw against the deposit before actual collection. With the exception of the indorsement "for collection", these circumstances are not conclusive of intent. The indorsement "for collection" makes the bank a collection agent merely and title to the check remains in the depositor.

§177. Insolvency of Bank in Which Check is Deposited.

When a bank in which a check was deposited becomes insolvent before the collection is completed, the rights of the depositor depend upon whether or not title passed to the bank, as explained in the preceding section. If title passed to the bank, the depositor is a mere creditor and must come in and share in the assets of the bank with the other creditors. On the other hand, if title remains in the depositor, he is entitled to the check as against the receiver. If the check is collected after the receiver takes possession, in a case where title to the deposit remains in the depositor the latter is entitled to the proceeds in full. In any event, when the collection is completed and the proceeds mingled with the funds of the bank prior to the bank's insolvency, the depositor is a mere general creditor and must share with the others the assets of the bank.

§176. Title to Check Deposited in Bank. It frequently becomes necessary to determine the ownership of a check deposited in a bank for collection. There are cases wherein a creditor of the depositor of a check undertakes to reach the check or its proceeds through garnishment proceedings. He will contend that his debtor, the person who deposited the check is the owner of it and that he, as creditor, is entitled

to collect the debt out of the proceeds of the check. It may happen that the bank in which the check is deposited is also a creditor of the depositor, although it has not attempted to collect its claim by the institution of garnishment proceedings. The bank may meet the garnishing creditor's contention by assuming the position that title to the check passed to the bank at the time of the deposit and insist that, being in possession of the check or its proceeds, it has rights which the garnishing creditor cannot overcome. It then becomes necessary for the court to determine who has the superior right, the bank or the garnishing creditor.

Most of the cases involving the question of title to a check or its proceeds arise out of the insolvency or bankruptcy of some bank handling the check in the process of collection. A check may be forwarded by the bank in which it is deposited to a corresponding bank for collection and it may so happen that, at the time of the transaction, the forwarding bank is indebted to the correspondent bank. In such a case, if the correspondent bank collects the check and receives word of the forwarding bank's insolvency before it has remitted the proceeds, it will as a usual thing retain the proceeds and undertake to apply them to the satisfaction of its claim against the forwarding bank. In a case of this kind the depositor of the check will contend that he never parted with title to the check and that he is entitled to the proceeds. The contention of the correspondent bank in such a case is that title passed to the forwarding bank at the time of the deposit and that the correspondent bank having the proceeds in its possession, is entitled to set them off against its claim upon the forwarding bank. The courts have been called upon to decide a great many cases involving questions of this kind and their decisions are by no means harmonious.

It does not necessarily follow from the fact that a check is deposited in a bank that title to the check passes to the bank. Nor on the other hand, can it be said that title in such a case always remains in the depositor. It all depends upon the intention of the parties as indicated by the surrounding circumstances. There are certain circumstances which tend to indicate an intention on the part of the depositor and bank that title to a check, even after deposit, shall remain in the depositor. Such an intention is evidenced by the fact that a check is indorsed "for collection" or by an understanding or agreement between the parties that the bank may charge back the amount of the check in the event of its non-collection. Such an intention is also indicated where there is a failure or refusal on the part of the bank to credit the check as cash or a refusal by the bank to allow the depositor to draw against the check until the proceeds thereof have been received. On the other hand, the passing of title to the bank is strongly implied from the fact that the check was indorsed in blank or indorsed generally to the bank. The intention that title shall pass to the bank is also indicated by the fact that the bank credited the amount to the depositor as cash or permitted

him to draw against the deposit before the actual collection of the proceeds.

For the most part the circumstances referred to are not conclusive on the question of the passing of title. The one exception is the indorsement "for collection." The authorities universally hold that when a check is indorsed in this manner, title thereto remains in the depositor. When a check is so indorsed and delivered to a bank, the bank takes it merely as agent of the indorser for the purpose of collection and the indorser remains the owner of the check, consequently if a bank fails while a check indorsed "for collection" is in its possession, whether it be the initial bank or some correspondent bank to which the check has been forwarded, the check belongs to the depositor and he is entitled to it as against the receiver of the failing bank. If the check is collected after the receiver takes possession, the depositor is entitled to claim the proceeds. If, however, the check is collected and the proceeds mingled with other assets of the bank prior to the time of its failure, the depositor cannot claim the proceeds of the check. In such a case, he must come in and share with the other creditors in the assets of the bank. In other words, the agency which is created by indorsing a check "for collection" terminates when the proceeds are received and become part of the general funds of the bank. At that moment the bank ceases to be an agent for collection or trustee and becomes merely the debtor of the depositor for the amount of the check.

In a New York case the plaintiff bank in New York City, being the owner of certain checks, sent them to a firm of private bankers which acted as its correspondent in Syracuse. The checks were indorsed "for collection for account of" the plaintiff bank, and were accompanied by a letter stating that the enclosures were "for collection and credit." It was customary for the correspondent to remit to the plaintiff once each week the amount standing to its credit and to charge back uncollected paper with protest fees. The correspondent failed, having in its possession the proceeds of certain items sent to it by the plaintiff and other items still uncollected. In an action against the assignee, it was held that the plaintiff could recover the amount of the paper collected after he took possession but could not recover the amount collected prior to the assignment. National Butchers & Drover's Bank v. Hubbell, 117 N. Y. 384, 22 N. E. Rep. 1031.

Not only is an indorsement "for collection" ineffectual to pass title to the check so indorsed, but it is notice to all subsequent parties dealing with the check that title thereto still remains in the depositor. It follows that when a check indorsed "for collection" is forwarded to a correspondent bank and collected by the bank, the correspondent is not entitled, upon the failure of the initial or forwarding bank, to apply the proceeds of the check to the satisfaction of a debt owing to it from the initial bank. In accordance with this rule it was held that, where a check indorsed "for collection" was forwarded by the initial bank to a correspondent,

which credited it to the initial bank as cash and paid checks drawn by that bank against such credit, using up the credit entirely and leaving the account overdrawn, the correspondent bank could not apply the proceeds of the check against the overdraft of the initial bank. Bank of Clarke Co. v. Gilman, 81 Hun. (N. Y.) 486, 30 N. Y. Supp. 1111, Aff'd 152 N. Y. 634.

The indorsement for "deposit" is not so clear in its meaning and effect as the indorsement for collection. There seems to be a conflict among the authorities as to whether a check indorsed for deposit and placed with a bank becomes the property of the bank. At least there is a conflict to the extent that some of the decisions hold that such an indorsement passes title to the bank, while others hold that the title remains in the depositor. This conflict, however, may be explained on the ground that in such cases the courts determine the ownership of the check by referring to the facts surrounding the transaction indicative of the intention of the parties. In Beal v. City of Summerfield, 50 Fed. Rep. 637, it appeared that a city treasurer deposited checks in a bank indorsed "for deposit." The checks were immediately credited on his pass book but there was no agreement that they should be treated as cash, or that the credit should be drawn against before collection. Before the checks were collected a receiver was appointed for the bank and the proceeds subsequently came to his hands. It was held that title did not pass to the bank and that the depositor was entitled to the fund in the possession of the reciever.

In a Georgia case it was held that, where a draft indorsed "for deposit" was deposited in a bank and forwarded to a correspondent, the depositor having the right to draw against the credit and, in fact, drawing against it, the property in the draft passed to the initial bank; this being the case, the proceeds of the draft in the hands of the correspondent bank were not subject to garnishment at the instance of a creditor of the depositor. Fourth Nat. Bank v. Mayer, 89 Ga. 108, 14 S. E. Rep. 891.

These cases are readily distinguishable in that in the first case the depositor did not have the right to draw, indicating that the parties did not intend that title should pass to the bank, while in the second case the depositor was allowed to draw before collection, evidencing an intention that the bank should become the owner of the check and not merely a bailee or collecting agent.

The fact that the bank is entitled, either under an express agreement, or as the result of an understanding implied from a previous course of dealing, to charge back uncollected checks, throws light on the intention of the parties as to whether or not title is to pass to the bank. As a general rule title to the check deposited does not pass to the bank where there is an agreement or understanding to the effect that uncollected checks may be charged back to the depositor and the credit theretofore given revoked. This has been held so even though the check is indorsed

in blank and credited to the depositor as cash and the depositor is allowed to draw against the credit.

The fact, however, that the bank is entitled to charge back the check in case of noncollection is not an absolute indication that title remains in the depositor. It is sometimes held, in cases where the depositor is allowed to draw against the check before collection, that title passes to the bank, notwithstanding the fact that the bank has reserved the right to charge back the amount if the check is not collected.

§177. **Insolvency of Bank in Which Check is Deposited.** When a bank in which a check is deposited becomes insolvent before the collection is completed, various questions are likely to arise as to the rights of the different parties connected with the transaction. As a general rule, the controversy is waged between the depositor of the check and the receiver of the bank, the depositor contending that he is the owner of the check and is entitled to it or its proceeds in full and the receiver taking the stand that the bank was the owner of the check at the time of its failure and that the proceeds form a part of the general assets of the bank for distribution among its creditors.

As already pointed out, the courts endeavor to settle questions of this kind by ascertaining the intention of the parties as to whether title to the check should pass to the bank or remain in the depositor; and, in ascertaining such intention, they are guided by such circumstances as the form of the indorsement, the manner in which the check was credited, the undertsanding, if any, as to the right to draw against the deposit before collection, etc.

It is sometimes understood between the parties that the bank shall have the right to charge back the amount of the check in case of its non-collection and such an agreement is a determining factor in ascertaining the rights of the parties. Where there is such an agreement it is held that an unrestricted indorsement does not pass title to the check. In a case of this kind it appeared that the plaintiff company deposited in a bank a check indorsed by it in blank. The amount was credited to the depositor and it could draw against the credit, but it was understood that if the check was not paid on presentation, the amount could be charged back to the depositor. The bank failed before the check was collected. It was held that the facts recited stamped the transaction as a bailment for collection and not as a sale of the check to the bank, and that, therefore, the plaintiff was entitled to the possession of the check as against the receiver. Armour Packing Co. v. Davis, 118 N. C. 548, 24 S. E. Rep. 365.

The fact that the depositor is not entitled to draw against a deposit of checks until they have been collected is also an indication that the parties intended that title to the checks should remain in the depositor. Thus, where checks indorsed in blank were credited to the depositor, the depositor having no right to draw against the credit until collection was made, and it being understood that the bank might charge back

uncollected checks, and the bank failed before being notified by its correspondent that the checks had been collected, it was held that the depositor was entitled to recover the proceeds from the receiver as a trust fund.

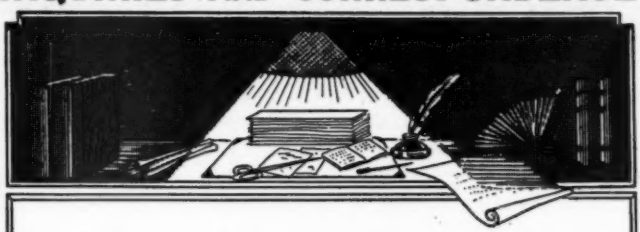
In Miller v. Norton, 114 Va. 609, 77 S. E. Rep. 452, the plaintiff deposited in his bank a check indorsed generally which was credited to his account. It was understood that the bank might charge back the amount of uncollected checks and it did not appear that the depositor had any authority to draw against items deposited until they were collected. The check in question was forwarded and reached the drawee on the day after a receiver had been appointed for the initial bank. The proceeds of the collection afterwards came to the receiver's hands. It was held that title to the check had not passed to the bank in which it was deposited and that the depositor was entitled to recover the proceeds of the collection from the receiver.

The decisions, just referred to, present a situation wherein the bank in which the check was deposited closed its doors prior to the collection of the check. Where the failure does not occur until after the check has been collected and the proceeds are in the hands of the bank, the circumstances attending the deposit, such as the right of the depositor to draw before collection and the right of the bank to charge back if not collected, become immaterial. Upon receiving the proceeds of the collection and mingling with its general funds, the bank becomes the debtor of the depositor, though prior to that time it might have been a mere agent for collection, and the depositor can enforce no preference, but is limited to the rights of a general creditor.

In a recent California case, a bank, to which a check was sent for collection, collected the amount and, after deducting its usual charge, sent its draft to the owner of the check. The bank, however, suspended business before its draft was presented and the draft, therefore was not paid. It was held that while the bank was clearly an agent for collection in the first instance, the relation was changed to that of debtor and creditor upon the completion of the collection. Gonyer v. Williams, Cal., 143 Pac. Rep. 736.

(*To be continued.*)

INQUIRIES AND CORRESPONDENCE



This department places at your service able legal talent and experts on banking and financial matters. Inquiries from our subscribers are answered free. Name and address is published unless otherwise requested.

CONDUCTED BY JOHN EDSON BRADY OF THE NEW YORK BAR.

CAUTION.

In submitting a question it is essential that all of the facts involved be clearly set forth. If the question relates to a check, bill of exchange, note, or other negotiable instrument, or to any paper or document, a copy should be sent, also copies of letters having reference to the transaction out of which the question arises.

PRESENTMENT FOR PAYMENT—INTEREST.

Editor Banking Law Journal, NEW YORK, May 1, 1916.

DEAR SIR:—I enclose a copy of a note and ask if you will give me an expression of your opinion.

1st as to when the note should be presented for payment in order to hold the endorser.

2nd. Can interest be collected on the note?

$4500. New York, December 12, 1915.

after date I promise to pay to the order of John Doe
Four thousand five hundred.....Dollars
at National Bank, New York, N. Y.
Value received Interest 6%.
No. Due January 18, 1916. Richard Doe.

Answer:—The first question raised is when the note should be presented for payment in order to hold the indorser. By the express terms of the note it appears that it was due on January 18th, 1916. Section 131 of the New York Negotiable Instruments Law provides that "where the instrument is not payable on demand, presentment must be made on the day it falls due." This section refers to presentment for the purpose of charging an indorser. It follows, therefore, that the instrument in question should have been presented at the place of payment on January 18th.

There are, of course, cases in which presentment is not required in order to charge an indorser with liability. Section 140 of the Negotiable Instruments Law provides that " presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented." Delay in making presentment is also excused when caused by circumstances beyond the control of the holder and is not due to his default or negligence. It is also provided that presentment is dispensed with where it is waived by the indorser. If in the present instance presentment was not waived or otherwise dispensed with by the indorser, and the note was not presented at maturity, then the indorser was discharged of liability.

With reference to the question involving interest, it seems quite clear that this note should draw interest at the rate of 6% from its date, December 12th.

The note in question may be said to be ambiguous so far as the matter of interest is concerned. In effect it provides for interest at the rate of 6%, but does not mention the date from which it is to run.

A note of this character is covered by section 36 of the Negotiable Instruments Law, which provides as follows: " Where the language of the Instrument is ambiguous, or there are omissions therein, the following rules of construction apply:* * *

" Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof."

A decision which illustrates the working of this rule is Horenstein v. Cifuno, 86 Neb. 103, 125 N. W. 136; the decision is published in full in volume XXVII of the BANKING LAW JOURNAL on page 347.

The note involved in this case was filled out on a printed blank and a blank space reserved for interest was left unfilled. The provision for interest in the note, read as follows: "with interest at the rate of —% per annum from —— until paid." The note was dated January 4, 1907 and was payable one year after date. It was held in this case that the note should draw interest at the legal rate from its date.

The court said that the legal effect of leaving the blank spaces unfilled was the same as though the note had read " with interest until paid." " This," said the court, " would cause the debt to draw interest at the legal rate of 7% per annum from the date of the note."

While this decision was rendered after the adoption of the Negotiable Instruments Law in Nebraska, it does not refer to the statute. The decision, nevertheless, expresses the rule laid down in the statute, which is also the general rule in effect prior to the adoption of the statute.

CHECK PAYABLE TO TWO PERSONS.

Editor, Banking Law Journal, California, May 4, 1916.

DEAR SIR:—Please advise me if a bank in California would be protected if they paid the enclosed check to either one of the two payees. Some claim that the word "or" justifies a bank in paying the check to either one of the two payees. Others claim that to be safe a bank should require both to endorse. Please advise me according to California law.

Thanking you for your kindness in this matter, I am,

Yours very truly, ASSISTANT CASHIER.

GERMAN AMERICAN TRUST AND SAVINGS BANK

Los Angeles, California, May 5, 1916.

Pay to the order of Ray Church or Mrs. Ray Church ($100)
one hundred and no/100 dollars.

Account No.——— John Doe.

Answer:—We know of no decision, in which the court has been called upon to decide whether or not a bank is protected in paying a check to one of two payees named therein, where the payees are designated in the alternative. There would seem, however, to be no doubt that the bank is justified in paying either one of the parties. The plain meaning of a check drawn in this manner is that it is payable to either of the parties named. It is not at all unusual to draw checks in this form, especially checks which are delivered to attorneys in settlement of claims owed by their clients. The usual method is to make the check payable to "John Doe, or Richard Roe, attorney." The object is so that the attorney may collect the amount of the check and so that the drawer will have a record of the payment, showing the purpose for which the check was given. It is the intention of the parties that the check may be paid upon the indorsement of either and the bank is undoubtedly protected in paying either of the parties named. It may be added that no indorsement is necessary to give validity to payment of a check by a bank. If the bank pays a check to a person to whom it is payable, the bank is protected even though it does not obtain his indorsement.

There are cases which pass upon the manner in which a check should be indorsed for transfer when it is payable to two or more persons. While these cases are not exactly in point with the question here presented, they support the view expressed. In Daniels on Negotiable Instruments, section 684, the rule is stated as follows: "If several persons not partners, are payees or indorsees of a bill or note, it should be indorsed by all of them unless it be expressed to be payable to the order of either of them, or to the order of certain ones of them, in which cases their indorsement would suffice."

The Negotiable Instruments Law provides that "where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others." In an Iowa decision, the Union Bank v. Speis, 151 Ia. 178, 130 N. W. Rep. 928, it was held that the section just quoted refers only to instruments which are payable to two or more persons

jointly, as for instance a note payable to the order of A and B. In this case, it is held that a note payable to the order of A or B might be transferred by indorsement of either of the payees. Of course, the Negotiable Instruments Law is not in force in the state of California and its provisions have no force in that state. The Iowa decision just referred to, however, passed upon a question not covered by the statute and expresses the general rule as to the indorsement for transfer of paper payable to two or more persons alternatively. And there is no reason to believe that this rule would not be followed by the courts of California. If an instrument payable to A or B can be transferred by the indorsement of one of the payees, it should clearly follow that a check payable to to A or B may be safely paid by the drawee bank to either A or B.

SALE OF COLLATERAL SECURING JUDGMENT NOTE.

Editor Banking Law Journal, Illinois, May 2, 1916.

DEAR SIR:—Enclosed copy of a note which was secured by collateral. The company that gave the note has seven directors, four of these directors signed the note and the check was made out to the company for $1410.00—$90.00 interest was taken out as interest. The company accepted the check, deposited it to their credit and used the money in paying debts owing by them. At the time this note was made the collateral was sufficient since then the value of the collateral has depreciated and John Doe has demanded additional collateral. The oil company has not done this. The demand for the additional collateral was made by means of a registered letter to the secretary of the oil company.

Can John Doe sell this collateral at most any price without notice as the note reads? In other words can John Doe sell this collateral for $100.00 more or less and then go on to the company for the balance due on the note? Can John Doe take judgment on this note without suit? In case of taking judgment, should this be taken in the county where the property is located or where the office of the company is located? Is this note due now?

Very truly, CASHIER.

$1500.00 Illinois, January 24, 1916.

One year after date, we or either of us promise to pay to John Doe, or order, at the Banking House of John Doe, at Illinios,.....
Fifteen Hundred and no/100 dollars
for value received with interest at the rate of 6 per cent. per annum from maturity. Demand for payment, protest and notice of dishonor are hereby waived by all parties.

TRUE OIL & GAS CO.
by James Doe, Director
Adam Doe, Director
Henry Doe, Director
Sam Doe, Director.

Having Executed a promissory note dated at Grayville, Ill., on the 24 day of Jan., 1916, for $1500.00 payable to John Doe, or order, one year after date, with interest from maturity at the rate of six per cent. per annum; and being desirous of securing the same, and all our other liabilities, actual and contingent, to said John Doe, or his assigns, now existing, or which may hereafter arise, we do hereby pledge to said John Doe and his assigns, as collateral security for said note and said other liabilities Cert. No. 36 for sixty shares of stock in the True Oil & Gas Co. of Chicago, Ill., and agree to give additional security to keep up the present margin whenever the market value of the above collateral should decline and within twenty-four hours after receipt of notice so to do from the holder of this note or

other of said liabilities. In default of payment of said note, or other of said liabilities, at maturity, or in default of our giving such additional security, when so notified, or in case of our suspension, failure or insolvency, or the commission of any act of insolvency or bankruptcy on our part, said John Doe, or his assigns, shall in addition to the foregoing collateral, have a lien on all notes, drafts, bills receivable or moneys held by or in transit to said John Doe, or his assigns, in our name or for our account, the same to be deemed to have been assigned to said John Doe, or his assigns as additional collateral for the payment of said note and all other of our said liabilities, actual and contingent; said John Doe, his assigns, or the holder of such liability to have the option of application of any or all of said collaterals before sale, or the proceeds thereof after sale, upon any, either or all of said liabilities as he may elect, and, upon such default being made, we do hereby authorize said John Doe, his assigns or the holder of said liability, to confess judgment for us for the amount due hereon and to sell, or cause to be sold, any or all of said collaterals, or any substitutes therefor or additions thereto, at public sale, upon such notice, at such place and on such terms as said John Doe, his assigns or the holder of said liability may deem proper, or, at the option of said John Doe, his assigns or the holder of said liability, at private sale, without notice to us or the public, and to apply the proceeds first to the payment of the expenses incurred by said sale, next to the discharge of our liabilities as hereinabove set out. Any surplus left shall be paid to us. If the proceeds of such sale are not sufficient to pay all of our liabilities hereby secured, we agree to pay the balance on demand. In case of a sale of said collaterals, said John Doe, his assigns, or the holder of any liability hereby secured may become the purchaser thereof without any right of redemption on our part. In case payment of this note is not made at maturity and the same is placed in the hands of an attorney for collection, we agree to pay ten per cent. additional on the principal and interest to the holder hereof as attorney fees. Notice delivered at, or mailed to, our last known place of business, or residence, shall constitute due notice for additional security.

TRUE OIL & GAS CO.
by James Doe, Director
Adam Doe, Director
Henry Doe, Director
Sam Doe, Director

Answer:—The above note contains a provision that the maker will give additional security upon twenty-four hours notice whenever the market value of the collateral already given should decline. It provides that such notice may be sent by mail to the last known place of business of the maker. It further provides that upon the maker's default in giving additional security requested, the holder is authorized to confess judgment and to sell all collateral securing the note at public or private sale, with or without notice, and to apply the proceeds to the payment of the note.

It appears that the market value of the security given in this instance declined, that additional security was demanded by notice sent in the manner prescribed in the note and that such security has not been furnished.

Though the note does not expressly state that it shall become due and payable on default of the maker in providing additional security, it does provide that the maker may confess judgment upon such default. This can only mean that judgment can be confessed at the time of the default. It must follow that the note was in effect due at the time

when the maker refused to furnish additional security in accordance with the terms of his contract.

Authority for confessing judgment is found in section 8625 of the Illinois statute which provides as follows: "Any person for a debt bona fide due may confess judgment by himself or attorney duly authorized, either in term time or vacation, without process." There appears to be no statutory provision regulating the county in which the judgment should be entered. The important thing to remember about entering judgment upon a confession is that the judgment must be entered in a court which would have jurisdiction if an action were commenced upon the note. Assuming that the court has jurisdiction in this case it would seem that the judgment could be entered in any county at the option of the creditor. Probably the proper course would be to enter judgment in the county in which the debtor's property is located for the reason that this would facilitate the issuance and satisfaction of execution.

With reference to selling the collateral, the holder is entitled to stand upon the provisions of the note. This note provides that the holder may sell with or without notice. The holder is, therefore, not required to give notice of sale. It also provides that the sale may be public or private. The holder, may therefore, dispose of the collateral at public or private sale at his option. This does not, however, give the holder the right to sell the collateral "at most any price." The general rule is that the pledgee must act in good faith and with a reasonable degree of skill and diligence in securing a fair price and conserving the pledgor's interests. In other words, the mere fact that the note provides for a sale without notice, does not give the holder the right to dispose of the collateral at a totally inadequate price. On the question of selling collateral, interesting information can be obtained from the case of Lem v. Wilson, Cal., 150 Pac. Rep. 641, which was published in October, 1915, issue of the BANKING LAW JOURNAL on page 680.

PIERRE JAY DISCUSSES THE COUNTRY BANK AND THE FEDERAL RESERVE SYSTEM.

Pierre Jay, Federal Reserve agent at New York, delivered an address of exceptional interest, bearing on the relations between the country banker and the Federal Reserve System, at the banquet given by the Jefferson County National Bank of Watertown, New York, on April 17th, the occasion of the one hundredth anniversary of the establishment of the bank.

Mr. Jay first referred to the principal advantages to be derived from the Federal Reserve System by the country bank. These he enumerated as follows:

1. The act is an insurance against currency panics.

2. It offers valuable rediscount privileges to the country bank and the country banker has found out that no note is too small to offer for rediscount.

3. It has brought about a substantial reduction in the amount of reserves required to be carried.

4. It permits country banks to loan a certain percentage of their capital or time deposits on farm mortgages.

5. It permits member banks to act as trustee, executor, registrar, etc. when the same is not in contravention of state law.

6. It empowers member banks to accept drafts drawn upon them, growing out of the importation or exportation of goods.

7. It provides that the Reserve banks during the period of thirty years shall purchase from the national banks their government bonds. As a result the United States 2's are now selling at par.

8. It permits the country bank through its reserve bank to convert the notes of depositors into cash, doing away with the necessity of carrying bonds to use as collateral in borrowing from a city correspondent.

9. It makes possible the close fiscal relations, which should exist between the government and the reserve system.

10. It paves the way for a country wide collection system.

Mr. Jay then considered the various disadvantages which have been pointed out in the act, and answering each one in turn in his customary forceful and logical manner, showed convincingly that these disadvantages are more apparent than real. The following are the objections to the system which he refuted:

1. The failure of the Reserve bank, as yet to pay dividends.
2. The certain loss of interest on reserve deposits.
3. The adjustment made necessary by the development of the collection system.
4. The probable loss of the revenue many country banks now secure by deducting exchange when remitting for checks drawn upon them.

The speaker then discussed the remedies applicable to the situation. He stated that withdrawal by the country bank is most certainly not to be resorted to and that the country banker, who believes that he can thereby retain the exchange profits to which he has become accustomed, is misinformed. With all the national banks and many state banks remitting at par, the remaining state banks cannot long afford to conduct their business on any other basis.

In these words Mr. Jay pointed out the correct solution of the problem.

"For the progressive, resourceful banker, the remedy for the costs which the system inevitably entails, is, to my mind, not to withdraw, but to recognize the changing conditions, to study the possibilities of the Reserve Act and the Reserve system, to look for new avenues of business and profit under its provisions, to learn form the officers of the Reserve bank what the system desires to accomplish, and when you understand it, to explain it to your customers—tell them what it means for them."

J. HOWARD ARDREY ADVOCATES ACCEPTANCE SYSTEM.

In an address delivered before the convention of the Association of Reserve City Bankers in Detroit on May 12th, Mr. J. Howard Ardrey, vice-president of the National Bank of Commerce in New York, pointed out the necessity for the general adoption of the acceptance system.

He observed that the new banking law was not enacted for the benefit of the banks but for the business community and that those who are to reap the advantages of the act should not fail to do their share. In this regard, the bankers should assume the duty of educating their customers.

"This is particularly true," he said, "of representatives of banks located in the reserve cities, for the reason that 52 per cent of the aggregate loans of all national banks are concentrated in institutions of the 55 reserve cities. According to the annual report of the Comptroller of the Currency, the loans in reserve cities including the central reserve cities of New York, Chicago and St. Louis amount to $3,443,000,000 out of a total of $6,660,000,000 for the whole country. The reserve of the banks in these 55 cities amount to $1,198,000,000 out of a total of $1,970,000,000 for the whole country.

"The use of trade and bankers' acceptances should be greatly encouraged. The universal adoption of the acceptance system would be hastened if the business men of the counrty were made to realize and appreciate the many advantages it offers. Its general introduction would bring about a replacement of rigid open-book credits by liquid commercial paper. It would prevent the pernicious practice of deducting unauthorized and unearned discounts; it would check the practise of returning merchandise; it would afford easier procedure in the event of suit, for the reason that testimony as to the shipment, delivery, price, quality, quantity, etc., would not have to be admitted; it would solve the assigned account problem, and finally it would minimize the temptation to overbuy. These benefits would all contribute to a general improvement in mercantile ethics and economics and considerably reduce the losses sustained from 'bad' accounts."

MEETING OF A. B. A. EXECUTIVE COUNCIL AT BRIARCLIFF.

The spring meeting of the Executive Council of the American Bankers Association was held at Briarcliff Lodge on the first three days of the week beginning Monday, May 8th and was attended by about 200 bankers from various parts of the country. The meeting was an unusual one both with reference to the importance of the work taken up and the work accomplished.

One thing which lent particular interest to the proceedings was the fact that the meeting came within a few days after the issuance by the Federal Reserve Board of its circular, setting forth the details of the plan for the clearing and collection of checks by Federal reserve banks.

The action taken by the council finally resulted in the appointment of a committee of five, charged with the duty of carrying to the Federal Reserve Board a request that the proposed plan be deferred until such time as the views of the country bankers could be laid before the Board and the plan modified to meet their objections.

In the event that this committee is unable to accomplish the object for which it was created, it is to report back to the joint executive committee of the National Bank and Clearing House Sections for such further action as the latter may see fit to direct.

This Committee of five consists of W. H. Bucholz, vice-president Omaha National Bank, Omaha, Neb.; J. Elwood Cox, president Commercial National Bank, High Point, N. C., and Chairman Executive Committee, National Bank Section; John McHugh, vice-president Mechanics & Metals National Bank, New York, and Chairman Executive Committee, Clearing House Section; George E. Webb, president First National Bank, San Angelo, Tex., and Walker Broach, vice-president First National Bank Meridian, Miss.

During the continuation of the controversy, which was precipitated by the introduction of the resolution with regard to the proposed collection plan, Governor Benjamin Strong, Jr., of the Federal Reserve Bank of New York, arrived and was invited to attend the sessions. Governor Strong gave a long talk outlining the position of the Federal Reserve Board and the difficulties encountered in trying to comply with the mandatory provisions of the Reserve Act for the exercise of clearing functions by the reserve banks. The hardest problem, he stated, was that of the "float" or aggregate of uncollected checks in transit, which he said was fairly constant at about $300,000,000 a month. He pointed out that as a matter of practice, country banks have been receiving from their correspondents immediate credit on checks deposited for collection; a practice which in effect meant the purchase of that amount of checks by the correspondent banks; and that to expect the twelve Federal reserve banks, with their $55,000,000 capital, to give member banks the same service as the latter have been giving their country banks, involving the purchase of $300,000,000 worth of checks monthly, is asking the impossible.

Bankers present exhibited a keen interest in Governor Strong's remarks and

propounded a great many questions for him to answer. At the close of his address, the council expressed its appreciation by a vote of thanks.

Committee meetings were held on Monday. The sessions of the Executive Council occupied all day Tuesday and the greater part of Wednesday.

President James K. Lynch acted as chairman at all meetings of the council and presented the report of the administrative committee. The council was gratified at the decrease in loss of members through delinquency. At the spring meeting of 1910 the membership was 10,950 and loss through delinquents 243; this year with a membership of 15,503, the loss by delinquents was only 207.

The report of Treasurer E. M. Wing covered the period from August 15, 1915 to April 24, 1916 and showed a cash balance of $116,155.79.

Reports were also received from the following: Thomas B. Paton, General Counsel, covering matters of pending legislation; A. D. Welton, Manager Department of Public Relations; L. W. Gammon, Manager Protective Department; and Marian R. Glenn, Librarian. The report of the Protective Committee, read by the General Secretary, showed only three successful burglaries committed on member banks since last August.

The chief social feature of the meeting was a musicale Monday afternoon at Beechwood, the home of Frank A. Vanderlip. Mr. and Mrs. Vanderlip received the guests as they arrived in the automobiles provided by their hosts, and after opportunity had been given to inspect the grounds they listened to a splendid program by Mme. Julia Culp and the Russian Symphony Orchestra. Mr. Coenraad V. Bos accompanied at the piano. A collation was served in the dining room.

At the banquet Tuesday evening, tendered by Briarcliff Lodge, there were no speeches except over the long distance telephone. Through the courtesy of the American Telephone & Telegraph Co., each guest was provided with a receiver through which could be heard greetings between those present at Briarcliff and their friends in San Francisco. After an explanatory address, accompanied by motion pictures, by Mr. H. J. Carroll of the New York Telephone Co., the transcontinental line was opened by Mr. W. F. Schmidt of the company and then the talking began. President James K. Lynch spoke to James K. Wilson, of the Wells-Fargo Nevada National Bank at San Francisco; Ex-President William A. Law talked with Mr. F. L. Lipman at San Francisco; Mrs. Arthur Reynolds exchanged greetings with Mrs. J. G. Berryhill of San Francisco, and a vocal selection by Harold Jarvis, of Detroit, Mich., sung into a telephone transmitter at Briarcliff, was answered by a return victrola selection from San Francisco. William J. Henry, secretary of the New York State Bankers Association made a telephone address to F. H. Colburn, at San Francisco, secretary of the California Association. Governor Strong of the New York Federal Reserve Bank talked check collections with John Perrin. Chairman of the Board of the Federal Reserve Bank of San Francisco. The demonstration was a magnificent success in every way. Dancing followed in the ball room.

The golfers played the usual " kicker's handicap " and the silver cup offered by the Lodge went to Thomas P. Beal, Jr., of Boston.

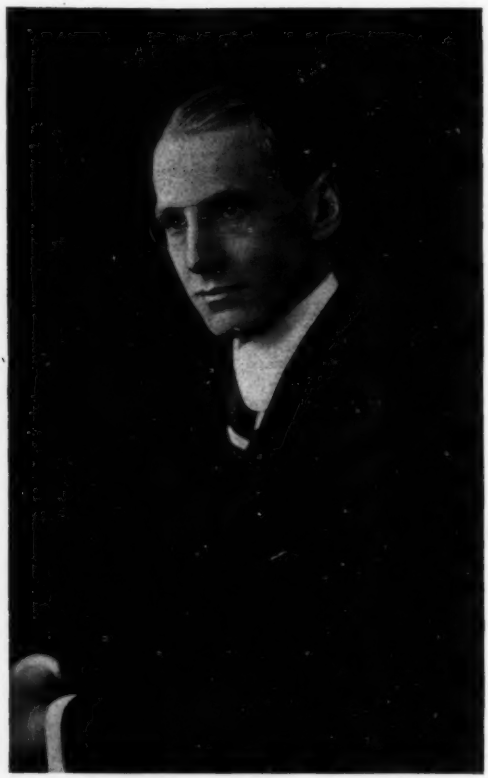
FINANCIAL ADVERTISERS' ASSOCIATION

Mr. John Ring, Jr., publicity manager of the Mercantile Trust Company of St. Louis and president of the Financial Advertisers' Association has sent out Association Bulletin No. 3, May, 1916, containing many valuable suggestions and a quantity of information useful to those interested in financial advertising. The circular gives a list of new members obtained by the association since the issuance of bulletin No. 2 and indicates that steady progress is being made by the association in the matter of membership.

Among the many interesting items in the circular is a statement to the effect that the sum spent in the United States for advertising aggregates the vast amount of $651,000,000 annually.

J. WILLIAM HARDT MADE CASHIER OF THE FRANKLIN NATIONAL BANK.

The Franklin National Bank of Philadelphia has long enjoyed the reputation of being one of those institutions which advances its men strictly upon a basis of merit. In keeping with this excellent policy is the recent promotion of Mr. J. William Hardt to the office of cashier. Mr. Hardt was born at Frederick, Md. in 1884 and received his education at the Central High School at Philadelphia and

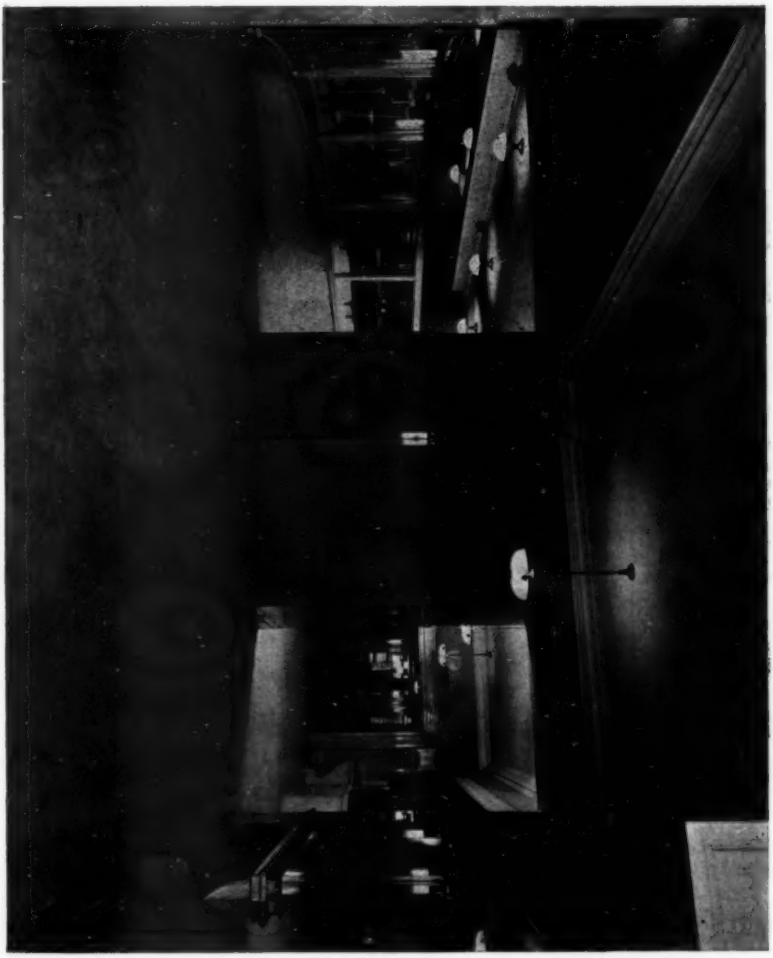


J. Willam Hardt,
Cashier of the Franklin National Bank.

later at the University of Pennsylvania, graduating from the latter institution in the class of 1906. Upon leaving college, he became assistant to the National Bank Examiner, to which work he devoted himself for a period of one year. He then entered the Western National Bank at Philadelphia, remaining there for about six months. In 1908 he was made manager of the general ledger department of the Franklin National Bank, which position he held until 1910, when he assumed the duties of assistant cashier. He held the last named position until his recent well merited promotion.

KNAUTH, NACHOD & KUHNE TAKE NEW QUARTERS.

The international banking house of Knauth, Nachod & Kuhne, of New York City, on May 1st moved into new and larger quarters in the Equitable Building, 120 Broadway. In its new and handsome establishment, the firm will occupy some 20,000 square feet of floor space, which has been converted into a model banking establishment. Those who have visited the offices of the firm, since the



Corridor and Private Elevator.

move to the Equitable Building was made, have been deeply impressed with the thoroughness of the equipment. The taking of new offices was made absolutely necessary by the great increase in business which the firm has experienced in the past few years.

The new location could hardly be better chosen to meet the convenience of customers or the demands of the firm's steadily increasing business Few current

happenings in New York's financial district serve more clearly to emphasize the tremendous growth of large financial institutions during the past year, than this necessary move on the part of one of its oldest and most conservative establishments.

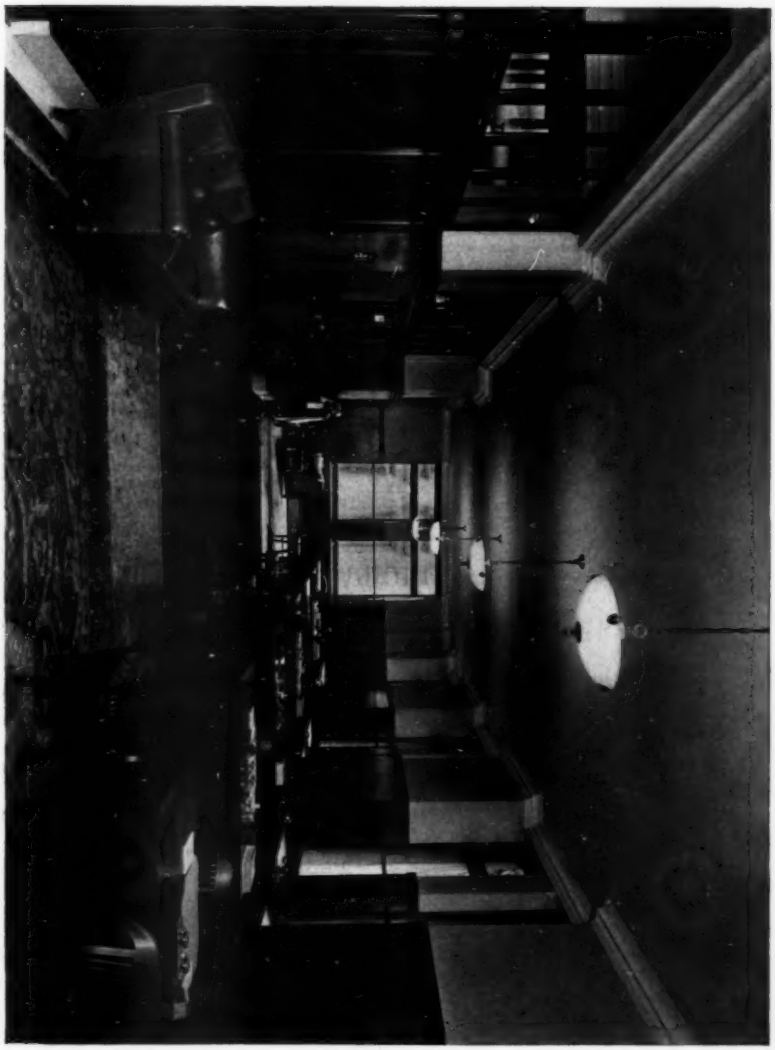
The firm of Knauth, Nachod & Kuhne has long enjoyed the reputation of being one of the most sound and conservative institutions in the country. While the house was organized in its present form in 1852, it really began its history in 1839, when Mr. Theodor Knauth of Leipzig, Germany, associated with Mr. S. A. Storrow of Boston, Mass. and founded the firm of Knauth & Storrow at Leipzig. Upon the death of Mr. Storrow in 1842, the firm name was changed to Knauth & Esche. It continued its business under the latter name until 1852, when Mr. Jacob Nachod and Mr. Frederick Kuhne were taken in as partners and the present firm name was adopted. The present membership of the firm is made up as follows: Mr. O. L.

Commercial Department.

Gubelman, Mr. R. C. Newton and Mr. Wilhelm Knauth. Before becoming associated with the firm, Mr. Gubelman was vice-president of the Guaranty Trust Company. Mr. Newton is the stock exchange member of the firm, and Mr. Knauth is a descendant of the founder of the house.

In the earlier days of its career the firm conducted an importing business of considerable size, but its banking interests increased by natural stages and finally banking transactions constituted the bulk of the business. From the first the firm offered its services to persons in America desiring to forward funds to Europe and to Americans abroad who wished to be provided with money for European travel and to pursue their studies. It was not long before the firm attained a world wide fame in the handling of international banking transactions. The fact that it has a banking house both in this country and abroad has naturally been a

great factor in developing and building up its business. Another reason for its success is the fact that it always had associated with it, as members of the firm, men of initiative, perseverance and wide training in international banking.



Executive Offices.

During the many years, through which it has been in existence, the firm's business has steadily increased and its activities have branched out, until today its good name is well known in every financial center in the world. It was the first

banking house in America to establish a foreign exchange department. Even back in 1900 more than 4000 banks in the United States transacted their foreign business through this firm and there were about an equal number of financial institutions in Europe which availed themselves of its service in carrying on their American business transactions. Today the firm has more than eleven thousand correspondents located all over the world.

The firm has always been a pioneer in opening up and developing new lines of business. With the rapid expansion of its foreign exchange business, there followed a demand from customers for some good method for carrying travelling funds. This led to the formation of a Letter of Credit and Travelers' Check Department. The convenience and greater security of these forms for carrying money for tourists are now so generally recognized that the annual business of the firm in travelers' checks alone runs into very large figures.

Foreign Exchange Department.

The same energy and conservative business policy which was responsible for the success of the other branches of the firm's business were applied to the creation and building up of the investment department, which in a short time became one of the firm's most important activities. Members of the firm have been members of the New York Stock Exchange since 1895, and the firm now conducts for its many clients a large investment business in stocks and bonds.

All of these departments coordinate to form a financial unit, which has grown to be one of the strongest and most highly considered among the leading banking institutions of America.

One of the private offices.

Board Room.

CORN EXCHANGE BANK OF NEW YORK ISSUES AN UNUSUAL BANK STATEMENT

The Corn Exchange Bank of New York has distinguished itself and performed a public service, by issuing a statement of its financial condition in a form that is entirely intelligible to every one, even those who are completely inexperienced in the matter of interpreting bank statements. The marvel is that every other bank in the country has not been doing the same thing for years. It will be even more marvelous if other banks do not immediately grasp the idea and make use of it. The new form of statement issued by the Corn Exchange is one of the most appealing and sensible solicitations for new business that has been distributed by any banking institution in the country.

It has always been customary for banks to send out neat and attractive circulars, setting forth their financial condition. What the bank really wishes to accomplish by this method of advertising is to acquaint the public with the fact that it is financially strong and to convince the public that deposits entrusted to it will be in safe hands. The ordinary bank statement, however, which is now sent out by various institutions, falls far short of bringing about the desired effect. Such statements generally point with pride to the amount of deposits. What the prospective bank depositor is really interested in is not the amount of money which the bank owes to the depositors, but the ability of the bank to meet the depositors' claims. In this regard the usual bank statement is most unenlightening. The man who receives the report and is uninitiated in the art of analyzing bank statements, discovers that the total resources and total liabilities are in the same amount to the cent. It looks to him as if the bank was just breaking even. He finds the surplus listed as a liability and he begins to think that he doesn't know the meaning of surplus. He is liable to conceive the idea that the bank is able to do anything it pleases with the figures that appear in its statement. He sees such items as " exchanges," " due from banks," "bond account," " notes outstanding," etc., and he has but a vague idea of their import. It is not going too far to say that the ordinary bank statement is absolutely meaningless to the average bank depositor. He can gather in just about as much information from the statement as a banker might glean from a physician's prescription. The only difference between the ordinary bank statement and the prescription is that no one is supposed to decipher the latter.

The statement issued by the Corn Exchange goes at the thing in an entirely different manner. It does not assume that the person it is addressing has a knowledge of bookkeeping and accounting which would qualify him for the position of bank examiner. On the contrary it takes into consideration the fact that the person addressed may have but little knowledge of advanced bookkeeping and no inclination whatever to work out for himself the intricacies of a bank report. The statement begins by reciting the fact that the bank owes its depositors the sum of $112,136,047. Then it sets forth the various assets, which the bank has and which are available to the depositors. These assets amount to $122,267,197. It is a very simple mathematical operation to deduct the amount of deposits from the amount of assets and find that there is a surplus of more than 10 million dollars over and above all claims of depositors. That means something to any person of normal intelligence.

A statement set out in this form may be inartistic from an expert accountant's point of view, but it must be remembered that the bank depositing public is not made up of expert accountants. The statement, which we reprint below, contains exactly the information which a man, who is about to place account with a bank desires to have and is calculated to create public confidence and bring results in the form of increased business, which, after all, is the chief object of sending out financial statements.

STATEMENT.

THE BANK OWES TO DEPOSITORS PAYABLE ON DEMAND	$112,136,047.57
A conservative banker always has this indebtedness in mind, and he arranges his assets so as to be able to meet any request for payment	
For this purpose we have:	
I. CASH (Gold, Bank Notes and Specie) and with legal depositories returnable on demand.	$36,838,862.55
II. CHECKS ON OTHER BANKS Payable in one day.	9,081,454.03
III. LOANS TO INDIVIDUALS AND CORPORATIONS Payable when we ask for it, secured by collateral of greater value than the loans.	12,791,940.98
IV. WE OWN BONDS Of Railroads and other corporations of first quality and easily saleable.	17,991,169.41
V. WE HAVE LOANS Payable in less than three months on the average largely secured by collateral.	41,157,054.72
VI. WE OWN BONDS AND MORTGAGES AND REAL ESTATE	1,247,221.76
VII. OUR SIXTEEN BANKING HOUSES All located in New York City.	3,159,494.51
TOTAL TO MEET INDEBTEDNESS	$122,267,197.96
VIII. THIS LEAVES A SURPLUS OF Which becomes the property of the Stockholders after the debts to the depositors are paid, and is a guarantee fund upon which we solicit new deposits and retain those which have been lodged with us for many years.	$10,131,150.39

WE FEEL THAT THIS STATEMENT SHOULD ENABLE OUR DEPOSITORS TO INVITE NEW ACCOUNTS WITH PERFECT CONFIDENCE.

N. W. HALSEY & CO.

The May circular, devoted to high grade investment bonds, issued by N. W. Halsey & Company of New York, contains many excellent offerings, among which may be mentioned the following:

First and refunding mortgage 5 % gold bonds of the United Light and Railways Company, which owns eleven public service companies, serving 53 prosperous and growing communities in Illinois, Iowa, Indiana, Michigan and Tennessee. The bonds are dated June 1, 1912, due June 1, 1932, interest payable June and December 1st in New York, without deduction of normal Federal Income Tax and are redeemable in whole or in part at 102½ and interest on any interest date. Price to yield 6.05%.

$100,000 municipal 4's of Rochester, New York, due January 1, 1946. Price to yield 3.80%.

$100,000 Dayton, Ohio, municipal 4½'s, due March 1, 1941-6. Price to yield 3.95%.

$150,000 Hudson County, N. J., 4½'s, due March 1, 1966. Price to yield 4.10%.

$200,000 El Paso, Texas, 5's due July 1, 1955; opt. Price to yield 4.25%.

The issues of municipal bonds mentioned above are stated in the circular to be acceptable as security for postal saving bank deposits.

The circular also offers Armour and Company real estate first mortgage 4½% bonds. Interest payable June and December 1st without deduction of normal Federal Income Tax; due June 1st, 1939. Price 93¾ and interest, yielding 4.96%.

BROADWAY TRUST COMPANY

The recent circular issued by the bond department of the Broadway Trust Co., points out the need for conservatism in investments at the present time and makes several attractive offers, among which may be mentioned City of New York 4¼% serial coupon bonds, due 1919-1931, yielding from 3.75 to 4%, exempt from Federal Income Tax and New York State taxation, except for state purposes.

Baltimore and Ohio R. R. Co., prior lien 3½'s, due July 1, 1925, yielding about 4.40%.

U. S. Steel Corporation 10-60 year sinking fund 5's due April 1, 1963, yielding about 4.70%.

New York Central R. R. Co. convertible 6% debentures, due May 1, 1935, yielding about 4.80%, convertible into stock of the company at 105 between May 1, 1917, and May 1, 1925, redeemable on May 1, 1918, or any subsequent interest date at 110 and interest on three months notice.

Government of the Dominion of Canada 5% gold bonds dated April 1, 1916, maturing in 5, 10 and 15 years, yielding 5.05 to 5.15%.

"FIRST NATIONAL" CORN SHOW

The success which attended the First National Corn Show held in St. Paul in 1915 under the auspices of the First National Bank and the Northwestern Trust Company of St. Paul made inevitable the repetition of the show this year. The second annual show, fostered by the two institutions named in which the bankers of the northwest will co-operate, will be held in St. Paul on December 11th to the 16th inclusive. The contests, which are the feature of the show, are open to every farmer and farmer's son in the northwest. For the purposes of competition, the territory which includes Minnesota, North Dakota, South Dakota, Montana, Washington, Idaho, Oregon and northwestern Wisconsin will be divided into districts in the same manner as last year, there being 34 districts in all. Men and boys will compete separately. The various contests are confined to districts, there being no competition between states or between districts. Four prizes will be awarded for each district, the first and second prize for men and the first and second prize for boys. The aggregate value of the prizes offered is $5000.

The influence exercised by last year's show was not confined by any means to the district which makes up the corn contest territory. The show aroused the interest of bankers all over the country. The coming show will undoubtedly receive even wider publicity and will be accompanied by even more beneficial results than the exhibition of 1915. It is an assured fact that the Corn Show will now become an annual event.

UNION TRUST COMPANY

Mr. James Brown of Brown Brothers & Company of New York City, was recently made one of the trustees of the Union Trust Company of New York. The Union Trust is one of New York's older banking institutions, having been founded in 1864. At the close of business on March 17, 1916, this company reported deposits in excess of eighty millions; its total resources approximate ninety millions. The main office of the company is at No. 80 Broadway and its two uptown branches are located at 425 and 786 Fifth Avenue.

Mr. Edwin G. Merrill is president of the company; the other officers are John V. B. Thayer, J. Y. G. Walker and Henry M. Popham, vice-presidents, Carroll C. Rawlings, vice-president and trust officer, Benjamin A. Morton, asst. trust officer, Henry M. Myrick, secretary, T. W. Hartshorne, asst. secretary.

COLUMBIA TRUST COMPANY OF NEW YORK CITY

For the first time in its history, the Columbia Trust Company has crossed the one hundred million dollar mark. On May 1st this institution reported deposits amounting to $101,360,655, a figure that is exceeded by only five other trust companies in New York.

The remarkable increase in deposits is not the only evidence of the flourishing condition of the Columbia Trust. By reason of the great increase in business which has been this company's share, it recently became necessary to enlarge the institution's banking quarters. This was accomplished by taking over the commodious basement of No. 60 Broadway, in which building the Columbia Trust is located.

In addition to the main office at No. 60 Broadway, the Columbia Trust operates three branch offices in New York, the uptown office at Fifth Avenue, the Harlem branch at West 125th St., and the branch at 148th St., and 3rd Ave.

The officers of the company at present are as follows: Willard V. King, president, Benj. L. Allen, Howard Bayne and James Ely Miller, vice-presidents, Langley W. Wiggin, secretary, Harris A. Dunn, treasurer, Fred C. Marston and Robert I. Curran, asst. treasurers, Chellis A. Austin, J. Sperry Kane, and Frederick V. Clowes, asst. secretaries, Geo. Earle Warren, vice-pres. and trust officer, Orrin R. Judd, asst. trust officer and Arthur N. Hazeltine, asst. trust officer, and S. Stern, manager of Foreign Department.

MECHANICS & METALS NATIONAL BANK'S BOOKLET ON WAR LOANS AND WAR FINANCE.

The Mechanics & Metals National Bank of New York has published a booklet of 50 pages, bearing the title "War Loans and War Finance." It contains a record of the cost of the war in Europe, together with a summary of the permanent loans that have been made and statistics of the debt, past and present, of the nations at war.

Among the many interesting statements contained in the booklet is one to the effect that the war is at present costing the vast sum of 91 million dollars daily. By August 1st the war will have been in progress for a period of two years and it is estimated that the cost will have reached the astounding figure of 45 billions. The booklet appears at an opportune time and is one that will prove of real and lasting value.

It is designed with the special purpose of being useful for reference as a financial record of the war in its first two years, and is being distributed to the Bank's customers throughout the United States.

VALLEY TRUST CLUB ORGANIZED

On May 5th the entire force of the Mississippi Valley Trust Company from president to the office boys met at the Planters Hotel in St. Louis for the purpose of organizing the Valley Trust Club. The club will hold monthly meetings at which the advancement of the company will be discussed. Special talks will be given concerning the work of each department and suggestions heard as to the company's service.

At the meeting on May 5th the results of the New Business Contest in which the employees of the company have been active were announced.

Under the rules of the contest employees were divided into three classes and a prize offered for the highest score in each class, the scoring system being designed to allow credit for all classes of business transacted by the Company and to credit large and small accounts proportionately.

It was announced that the total score of 100,000 points set up as a goal for the contest had not only been reached but exceeded by more than 57,000; that practically every employe had scored creditably and that the Company's business had increased by reason of the contest, in all its seven departments.

Special emphasis was laid on an increase of $5,000,000 in the Company's deposits during the year ending May 1st.

BOOK REVIEWS.

AN AMERICAN BANKING SYSTEM. BY CHARLES N. FOWLER.

With an introduction by Elmer H. Youngman, Editor "Banker's Magazine" published by the Bankers Publishing Co., New York, Price $1.00.

From the title of this volume one is led to believe that Mr. Fowler had outlined a *new* plan for a banking system, but from an analysis of its pages and the pages devoted to Mr. Youngman's Introduction its main purpose and intent can be characterized as a drastic criticism of the Federal Reserve System.

In going through the volume one traces pretty clearly what Mr. Fowler advocated while he was a member of congress and in several of his addresses since; all of which deserves the careful consideration not only of the banking fraternity but of the law makers in Congress.

From the fact that the contents of this volume, other than its "Introduction," were published a short time ago in a volume entitled "National Issues of 1916," it is evident that Mr. Fowler believes this to be the psychological moment to successfully illustrate the weakness of the Federal Reserve Act; but coming as it does at this time, it savors seriously of politics. Not that Mr. Fowler has not continuously advocated his principles for a number of years, but his strenuous attack on the Federal Reserve System at this time cannot fail to create the impression in unbiased minds that it is governed by his political aspirations.

That the Federal Reserve System has its weak points, no experienced banker or economist will deny; but does that signify that its whole structure is unsound, or that its weak points cannot be repealed or amended?

In Mr. Youngman's "Introduction" an apparent endeavor is made to discredit the Federal Reserve Act by connecting it with Wm. J. Bryan's theories of a silver standard, as voiced by Mr. Bryan twenty years ago. Mr. Youngman first points out, by going back to the campaign of 1896, that Mr. Bryan endeavored to commit the United States to the silver standard under the guise of bimetallism, and subsequently he states that the fundamental principles of the Federal Reserve Act embody Mr. Bryan's monetary and banking theories.

Perhaps Carter Glass, Senator Owen, Paul Warbourg and others who assisted in framing the Bill may resent this assertion.

While it may be true that Mr. Bryan believes that the Federal Government should issue the money, we do not see how the fundamental principles of the Federal Reserve Act can in any way be connected with Mr. Bryan's theories of the silver standard twenty years ago.

In view of the fact that the Federal Reserve Act is the first banking and currency measure that has been enacted in fifty years, and that the National Bank Act of 1864 had become obsolete and inadequate, would it not be more in keeping with a spirit of fairness to give the Federal Reserve Act, at least two years trial, and then submit its weak points to Congress for amendment, than to charge the whole structure with being absolutely unsound?

The Statute is on the books, and it is likely that the majority of the present members of both houses of Congress are convinced it should be given a fair trial, and all that Mr. Fowler can say and do with his marvelous, forceful argument, logical as it may be, will not change one section.

When the Second Bank of the United States came into existence in January 1817, it was denounced by as many, proportionally speaking, especially bankers, as the Federal Reserve Act of today. But, fortunately for that institution, one of the ablest financiers the country has ever known, Wm. H. Crawford was made Secretary of the Treasury by President Monroe; and notwithstanding Mr. Crawford's great genius as a financier, the Bank was not pronounced a success for three or four years. But ere President Monroe's second term, through which he retained Mr. Crawford as his Secretary of the Treasury, the Bank had gained the confidence of the people and the finances of the nation were in far better condition than they had been since the First Bank of the United States went out of existence and these conditions remained until the expiration of the charter of the Second Bank in 1836. Furthermore its destruction brought about the panic of 1837.

Granting that Mr. Fowler's theories as to " Bank Credit Currency," are absolutely sound, it does not signify that the Federal Reserve Act is totally unsound.

When the measure was up for discussion in 1913, such able bankers as George M. Reynolds of Chicago and others spent a great deal of time in Washington laboring with its framers, and when the Act was ready to go to the President for his signature, it was considered by many successful, practical bankers as a fair Bill.

But " politics makes strange bedfellows." While we do not charge that Mr. Fowler's views on currency are governed by politics, there are indications that its object is to discredit the party that brought about the enactment of the Federal Reserve Act. Probably the majority of bankers and students of economic science are in accord with Mr. Fowler's currency views; but it does not seem that during his eight years as chairman of the Banking and Currency Committee in Congress he was able to convince a majority in Congress that his currency and banking plans were the only sound theories on currency extant, notwithstanding the party with which he was affiliated was in power during all that time. And now that he is not a member of either house of Congress, we doubt his ability to induce the people or Congress to accept his theories, even though they may be absolutely sound. We believe every banker in the U. S. should read this interesting and instructive volume.

AMERICAN EXCHANGE NATIONAL BANK'S BOOKLET ON ACCEPTANCES.

The American Exchange National Bank has recently issued and is now distributing a booklet of 48 large pages, the title of which is " Acceptances." The subject is one of deepest interest to bankers and business men of the country. This booklet gives the subject the thorough and careful treatment, to which it is entitled by reason of its great importance to the banking and business world.

The booklet contains facsimile forms of bank acceptances. It is divided into seven chapters as follows: chapter I, Credit Functions and Instruments; chapter II, The English Credit System; chapter III, German and French Systems Outlined; chapter IV, The American Credit System; chapter V, The Advantages of Acceptances; chapter VI, Regulations of Federal Reserve Board; chapter VII, Developing the Market for Acceptances.

In publishing and sending out this booklet, the American Exchange is entitled to the gratitude of its customers and friends and in fact, of everyone who receives a copy. It deals with a subject of the utmost importance and presents it in a manner that will appeal to everyone, who, in the slightest degree, is interested in the matter of bank acceptances.

COMPARATIVE NEW YORK BANK STATEMENT.

The following table shows the loans and deposits of the associated banks, reported to the New York Clearing House for the week ending May 8, 1915, and May 6, 1916, respectively, together with a computation of the proportionate increase or decrease of deposits for the year'

BANK	Loans and Discounts Average 1915	Loans and Discounts Average 1916	Legal Net Deposits Average 1915	Legal Net Despoits Average 1916	Deposits Per cent of Inc.	Dec.
Members of Federal Reserve Bank.						
Bank of N. Y. N. B. A....	$30,152,000	$35,468,000	$27,934,000	$33,775,000	20.9	....
Merchants National.....	24,989,000	30,144,000	23,705,000	30,388,000	28.1	....
Mechanics & Metals Nat.	98,018,000	124,882,000	97,680,000	138,395,000	41.6	....
National City.....	221,429,000	409,719,000	300,425,000	450,516,000	49.9	....
Chemical National.....	33,990,000	36,544,000	28,105,000	31,056,000	10.4	....
Atlantic National.....	10 019,000	12,485,000	9,949,000	13,462,000	35.3	....
Nat. Butchers & Drovers	1,956,000	2,428,000	2,053,000	2,195,000	6.8	....
American Exchange Nat.	67,097,000	75,811,000	66,582,000	78,981,000	18.6	....
Nat. Bank of Commerce..	166,971,000	238,013,000	152,065,000	245,719,000	61.5	....
Chatham & Phenix Nat...	37,387,000	63,184.000	39,854,000	68,265,000	71.2	....
Hanover National.....	96,234,000	121,458,000	100,776,000	140,850,000	39.7	....
Citizens Central Nat.....	24,520,000	26,943,000	22,632,000	25,890,000	14.3	....
Market & Fulton Nat....	8,760,000	9,864,000	8,762,000	10,027,000	14.4	....
Importers' & Traders Nat	29,318,000	32,656,000	25,320,000	28,944,000	14.3	....
National Park.....	111,999,000	143,503,000	108,792,000	147,629,000	35.6	....
East River National.....	1,902,000	2,157,000	1,942,000	2,335,000	20.2	....
Second National.....	15,456,000	18,221,000	12,931,000	15,878,000	22.7	....
First National.....	128,716,000	157,422,000	126,276,000	150,765,000	19.3	....
Irving National.....	50,140,000	68,960,000	57.667,000	77,127,000	33.7	....
N. Y. County National...	9,633,000	10,033,000	9,360,000	10,119,000	8.1	....
Chase National.....	135,264,000	193,145,000	148,896,000	219,079,000	47.1	....
Lincoln National.....	16,029,000	19,627,000	16,226,000	22,734,000	40.1	....
Garfield National.....	8,699,000	9,884,000	8,411,000	9,814,000	16.6	....
Fifth National.....	4,422,000	5,126,000	4,743,000	5,260,000	10.6	....
Seaboard National.....	28 ,664,000	40,878,000	33,520,000	47,581,000	41.9	....
Liberty National.....	31,129,000	49.250,000	33,249,000	55,451,000	66.7	....
Coal & Iron National....	7,261,000	8,843,000	7,229,000	8,891,000	22.9	....
Union Exchange Nat....	10,302,000	12,121,000	9,797,000	11,826,000	20.7	....
Nassau Nat. Bank Bklyn	8,451,000	9,855,000	7,727,000	9,432,000	22.	....
Broadway Trust Co.....	15,389,000	18,969,000	15,463,000	20,254,000	30.9	....
State Banks not Members of Federal Reserve Bank.						
Bank of the Manhattan Co.	36,600,000	42,817,000	41,400,000	50,565,000	22.1	....
Bank of America.....	31,623,000	33,224,000	30,109,000	31,915,000	5.9	....
Greenwich.....	10,430,000	11,643,000	11,308,000	12,571,000	11.1	....
Pacific.....	4,995,000	6,092,000	4,732,000	5,358,000	13.2	....
People's.....	2,090,000	2,453,000	2,382,000	2,524,000	5.9	....
Metropolitan Bank.....	12,241,000	14,758,000	10,459,000	13,563,000	29.6	....
Corn Exchange Bank....	73,736,000	74,101,000	83,642,000	98,887,000	18.2	....
Bowery.....	3,511,000	4,181,000	3,117,000	3,795,000	21.7	....
German American.....	4,919,000	5,818,000	4,881,000	5,944,000	21.7	....
Fifth Avenue.....	15,186,000	17,444,000	15,873,000	18,870,000	18.8	....
German Exchange.....	3,646,000	4,934,000	3,619,000	4,796,000	32.5	....
Germania.....	5,807,000	6,228,000	5,698,000	6,292,000	10.4	....
Bank of the Metropolis...	13,324,000	14,335,000	13,366,000	13,785,000	3.1	....
West Side Bank.....	4,339,000	4,670,000	4,358,000	4,705,000	7.9	....
N. Y. Produce Exchange.	11,919,000	14,564,000	13,458,000	16,740,000	24.3	....
State Bank.....	18,451,000	22,494,000	20,133,000	25,329,000	25.8	....
Totals.....	$1,687,113,000	$2,267,349,000	$1,777,606,000	$2,428,304,000		